

CANos. 19-10163, 19-10250

District Court No. 2:16-cr-00216-KJD-VCF

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LONNY DITIRRO, JR.,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF NEVADA

GOVERNMENT’S SUPPLEMENTAL EXCERPTS OF RECORD

NICHOLAS A. TRUTANICH
United States Attorney

ELIZABETH O. WHITE
Appellate Chief

ELHAM ROOHANI
Assistant United States Attorney
District of Nevada
501 Las Vegas Blvd S., Suite 1100
Las Vegas, Nevada 89101
(702) 388-6336
Attorneys for the United States

Date submitted: September 21, 2020

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NICHOLAS A. TRUTANICH
United States Attorney
Nevada Bar No. 13644
ELHAM ROOHANI
Nevada Bar No. 12080
CHRISTOPHER BURTON
Nevada Bar No. 12940
Assistant United States Attorney
501 Las Vegas Blvd. South, Suite 1100
Las Vegas, Nevada 89101
(702) 388-6336
elham.roohani@usdoj.gov
christopher.burton4@usdoj.gov
Attorneys for United States of America

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

United States of America,)	Case No.: 2:16-cr-216-KJD-CWH
Plaintiff,)	
vs.)	
Lonny Joseph Ditirro,)	Government's Sentencing Memorandum
Defendant.)	

I. Introduction

Five. The number of identified minors who showed up at trial to testify against Lonny Ditirro – girls who he raped and recorded their sexual exploitation.

Forty-eight. The total number of minor girls whose photos and videos Ditirro meticulously organized into folders on his SD card bearing their first names and ages between 13 and 17 years old; folders that contained child pornography files consistent with the sexually exploitative images and videos of identified victims that Ditirro produced.

Ditirro is sexual predator who is deserving of a substantial sentence that will naturally produce community safety for the longest period of time available, which is the remainder of his natural life. His patterned actions in this case, his utter lack of remorse, his repeated efforts to justify, deflect, explain away, and otherwise excuse his crimes, all prescribe a statutory maximum sentence for each count to run consecutive. This is especially true given that all of the evidence before the Court suggests Ditirro will not change; but instead will continue to present a significant danger to the community. A 140-year sentence is therefore sufficient but not greater than necessary to further the goals of sentencing. The government also requests a lifetime term of supervised release.

On September 10, 2015, Las Vegas Metropolitan Police Department (LVMPD) Task Force Officer Shannon Tooley received a police report from Patrol Officers Nicholas Bianco and Garrett Wilson referencing a child exploitation call for service. Officers contacted Rachel Saito, who was previously in a relationship with Ditiirro. Saito reported that she found a SanDisk Micro SD card in her bed that belonged to Ditiirro. Saito stated she viewed the contents of the SD card and found what she believed to be child pornographic images. Officers viewed contents of the SD card and observed several images

1 of females who appeared to be between 13 and 15 years of age engaged in sexual acts.
2 Officers impounded the SD card into evidence and notified Detective Tooley.

3 On November 30, 2015, Detective Tooley conducted an interview with Saito. Saito
4 described that she and Dittirro had begun dating in early 2015. Saito stated that Dittirro
5 moved into her apartment to live with her shortly after that they began dating. Around
6 September 9, 2015, while in bed, Saito discovered the SD card stuck to her leg. Saito stated
7 that she believed the SD card belonged to Dittirro as he had been asking her if she had seen
8 his SD card. Saito viewed the contents of the SD card and found images of Dittirro, both
9 clothed and nude, images of child pornography, and other photos of Dittirro engaged in
10 sexual acts with a female who appeared to be under 16 years of age.

11 On December 2, 2015, Detective Tooley obtained a search warrant to seize and
12 perform a full forensic examination on the SD card. On March 7, 2016, LVMPD Forensic
13 Analyst Matt Trafford completed a forensic examination on the SD card. He found 235
14 images/videos of Dittirro on the SD card, in folders titled "Me," which included "selfies" of
15 Dittirro, and "Me Restricted," which included naked "selfies" of Dittirro. Forensic
16 Examiner Trafford also found Dittirro's resume and birth certificate, showing ownership.

17 Forensic Examiner Trafford bookmarked 254 images and 42 videos of child
18 pornography saved on the SD card in carefully curated folders. 56 of the images depicted
19 infants and toddlers and five images depicted sadomasochism and violence. For example,
20 one image depicted a nude pre-pubescent female child lying on her back, with an image of
21 a playboy bunny drawn above her vagina and the words "Fuck Me" written on her pelvis.
22 An adult male's erect penis is seen above the child dripping with ejaculate onto her chest
23 and stomach. Another adult male's erect penis is penetrating her anus. Another photo
24 depicts an adult male with an erect penis ejaculating into the mouth of a female child. Yet

1 another video shows a nude adult male lying on his back with an erect penis while a nude
2 pre-pubescent female child is straddling the adult male. The male is penetrating the child's
3 vagina with his penis as he has vaginal sex with the female child.

4 In addition to these images of child pornography, Ditirro had organized and
5 catalogued dozens of folders titled with the name and age of nearly 50 girls. For example:
6 one folder was titled "T.H. 13" and another was titled "R.B. 14." There were 48 folders
7 titled with the names of girls and ages ranging from 13-17 years of age. These folders
8 included photos of the girls, videos of Ditirro having sex with/raping the girls, and letters
9 and text messages about how some of the girls were in love with Ditirro. The number after
10 each girl's name in the folder title appeared to be the age of the girl depicted in the folder.

11 Upon his arrest, Ditirro was *Mirandized* and voluntarily spoke with law
12 enforcement. Ditirro admitted that he did not have a computer, but rather that he used his
13 cell phone and SD cards to save information and data. Ditirro admitted that he only had
14 two cell phones in the past, both Android smartphones – a Samsung S6 and an earlier
15 model S4. Samsung phones are not manufactured in the State of Nevada. The SD card was
16 also not manufactured in Nevada.

17 Law enforcement subsequently identified four of Ditirro's victims from the SD card.
18 Ditirro's convictions on the first four counts in the Superseding Indictment relate to those
19 four victims – R.B., C.A., S.M., and T.H.

20 **R.B.**

21 R.B. told officers, this Court, and the jury, a harrowing story. When she was 14, she
22 met Ditirro through a social media chat application called Meet Me. The application
23 allows individuals to get in touch with other people nearby and arrange to meet. R.B.
24 began talking to Ditirro but eventually ended the conversation. Ditirro located R.B. on

Facebook, found out where she lived, and then showed up at her house uninvited. R.B. stated that Ditirro forcibly raped her both vaginally and anally on her back porch. A video in the “R.B. 14” folder on Ditirro’s SD card corroborated R.B.’s story, as the backyard porch furniture was still present at the home years later. The Court and jurors saw videos of this rape that took R.B.’s virginity.

R.B. told law enforcement that Ditirro continued to contact R.B. after this rape, sending her naked photos of himself, and used extortion and threats (to disclose the video he made of the rape to her religious family and physically harm her family) to get R.B. to send more naked photos of herself to him. These photos are also in the “R.B. 14” folder. R.B. further related that Ditirro raped her a second time, again on her back porch. R.B. stated that Ditirro recorded the rapes with a black smartphone, which corresponds to Ditirro’s statement that he had Android/Samsung smartphones.

R.B.’s trial testimony was consistent with her statement to law enforcement.¹ As the Court and jurors saw, R.B. continues to be visibly impacted by the rape at the hands of Ditirro years later.² Over the course of the past few years, R.B. has suffered from social

¹ Ditirro’s most recent claim that R.B. was lying because she allegedly told Ditirro over text that she was raped prior to being raped by him is factually unsupported and just another attempt to detract from his unquestionable guilt. Aside from the fact that it is irrelevant who else may have sexually assaulted R.B. before or after Ditirro, in reality, the text to which Ditirro is referring is R.B.’s text *to a later actual boyfriend that she had been raped by Ditirro*. To be abundantly clear, R.B. has been raped by only one person –Ditirro. He stole her virginity, her childhood, her innocence, her sense of security in her own home, and her mental well-being. His most recent fabrications are nothing more than a continued attempt to harass and humiliate R.B. The government, for one, is not distracted by Ditirro’s reprehensible attempts, and this Court should not be either.

² In preparing this sentencing memorandum, R.B. noted to the prosecutor that her pre-trial meeting was particularly traumatic because she had a vivid flashback to the rape. Government counsel remembered this pre-trial meeting where R.B. recounted the rape. The prosecutor was particularly troubled when R.B. spoke about Ditirro touching her neck, as he is seen to do on one of the videos. As R.B. was speaking, it seemed that she was having

1 anxiety, depression, and suicidal ideations due to these rapes. Her relationship with her
2 family suffered, and she suffered post-traumatic stress due to returning each day to the
3 place she was raped – her own home. R.B. began self-harming, cutting herself to ease the
4 pain from the constant reminders of the rape and mental anguish from Ditirro's extortion.
5 In her own words, R.B. had "her childhood ripped out of her by a predator who can only
6 think of one thing, hurting the people who he sees as weak and easy prey." Last year, as
7 the trial date was approaching, R.B.'s anxiety and fear caught up to her when she
8 attempted suicide and was almost successful in overdosing on drugs. This resulted in a
9 hospital stay and substantial medical bills.

10 R.B. continues to fear for her safety to this day – now that she has testified against
11 Ditirro, she fears that he will come find her and "do everything all over again." All of this
12 terror stems from one person – Lonny Ditirro.³

13 R.B.'s mother and father recount that R.B. used to be a happy child but just before
14 her 15th birthday – because of Ditirro – R.B. became suddenly sullen and secretive. When
15 her parents took away her phone, R.B. acted like an addict looking for her next fix. But, in
16 reality, the root of R.B.'s extreme anxiety over the loss of her phone was her terror that
17 Ditirro would follow through on threats to physically harm her family and disseminate the
18 sexual exploitation videos he had created of R.B. to her family, friends, school, and church,
19 unless she timely complied with his demands to send still more images and videos of sexual
20 exploitation. As a result of Ditirro's rape and extortion, R.B. obsessively changes her cell
21 phone number, i.e. a total of five times just this year. R.B.'s mother is concerned because

22 _____
23 an out of body experience. R.B. was clawing at her neck to the point of drawing blood,
reenacting the disgust she felt at having Ditirro's hands on her virgin body.

24 ³ R.B. has completed a victim impact statement, which is filed under seal as
Government's Exhibit 1.

1 R.B. is unable to maintain healthy relationships and friendships and R.B. has never
2 processed the harm caused by Ditirro. It is heartbreaking for a parent to watch their child
3 live in mental anguish and express suicidal thoughts. To help R.B., her parents have put
4 their house (the place R.B. was victimized) up for sale to rebuild their family. Ditirro did
5 not just destroy R.B., he destroyed her parents' happiness and security as well.⁴

6 **C.A.**

7 In 2014, C.A. was 15 years old when Ditirro initiated contact with her via Meet Me.
8 He initially told her he was 15, but later told her he had graduated high school in 2014.
9 C.A. told Ditirro she was a minor. He asked her to send nude images and videos to him
10 and said if she did, he would buy her an iPhone. He sent her pictures of himself
11 masturbating. The exchange of nude pictures and videos was done via Kik Messenger.
12 C.A. said she felt forced to send the nude images. Like with R.B., Ditirro extorted and
13 blackmailed C.A. to obtain her photos.

14 At one point, C.A. broke her iPod and could no longer have any contact with
15 Ditirro; she felt happy to not have to communicate with him. During their conversations,
16 Ditirro told her he wanted to marry her and that he was going to buy her an engagement
17 ring. In classic grooming behavior, Ditirro said if C.A. would have sex with him, he would
18 buy her other things.

19 C.A. was shown pictures taken from Ditirro's SD card folder with her name. C.A.
20 identified the images as being of her in her bedroom. As she identified the photos, C.A.
21 broke down crying, saying that on one occasion Ditirro asked if he could come over to her
22 house in Las Vegas, Nevada to "hang out." Ditirro told C.A. they would just hang out

23 _____
24 ⁴ R.B.'s parents have completed a victim impact statement, which is filed under seal
as Government's Exhibit 2.

1 outside in the front of her house, so she gave him her address. C.A. said at the time he
2 came over, her mom was out of town and her dad was at work. C.A. was on the upstairs
3 balcony when she saw him get off a bus and walk to her house. When she opened the door,
4 Ditirro, who is more than a foot taller and close to 200 pounds heavier than C.A., pushed
5 his way in the house and shoved C.A. down on the couch. He then carried her upstairs to
6 her bedroom, shut the door, and forced her onto her bed. C.A. asked him to leave. Instead,
7 he removed her clothing and his own.

8 C.A. remembered just wanting to call 911, but not having a phone. C.A. then said
9 he did “sexual stuff” to her; he made her suck his penis by pushing her head down on him.
10 He tried to have anal sex with her at one point. She then said he raped her. While Ditirro
11 was raping her, he had his white cell phone in his hand, recording the sexual assault. C.A.
12 asked him to stop and tried to push him away. He told her he wanted to get her pregnant at
13 15 years old. At one point he instructed her to call him “daddy.” At the conclusion of the
14 interview (while crying), C.A. said he traumatized her. This was the rape C.A. testified to
15 during trial.

16 In the C.A. folder, there are 56 images files, 8 of which depict C.A. nude. There are
17 10 videos in the C.A. folder, six of which depict Ditirro raping C.A. in her bedroom. These
18 six videos depict Ditirro orally and vaginally assaulting C.A. In one video, C.A. is kneeling
19 on her bed with her buttocks raised. Ditirro is kneeling behind her with his penis inserted
20 into her vagina. As he holds her down, Ditirro can be heard saying “You like that big dick,
21 baby?,” “Say ‘I love that big dick’,” “See, I told you, you couldn’t keep quiet with my big
22 dick.”

23 ///

24 ///

1 **S.M.**

2 S.M. met Dittirro when she was 15 years old on Meet Me. His profile said he was 17
3 years old and had picture of himself. S.M. said Dittirro showed her a driver's license, Social
4 Security card, and birth certificate, all stating he was 17 years old. Some of these falsified
5 documents were found on Dittirro's S.D. card. They chatted for couple of months. After
6 two weeks, Dittirro asked for nude pictures of S.M. and sent her nude pictures of himself
7 via Kik. He sent her a picture of his penis and asked if she "liked that." They chatted about
8 sex.

9 Just before Christmas, while in her freshman year in high school, S.M. asked her
10 mother if Dittirro could come visit for Christmas. Prior to his arrival, S.M.'s mother looked
11 online and found information that Dittirro was 34 years old. S.M. confronted Dittirro about
12 his age and he denied being 34 years old. This was one of the times Dittirro sent S.M. a
13 falsified document showing he was 17.

14 Dittirro traveled to Texas twice to have sex with S.M. The first trip, they had sex two
15 or three times. During the second trip, S.M. was 16 years old. They had sex two times
16 during that trip. Once during this visit, Dittirro began to forcibly rape S.M. and would not
17 stop. S.M. tried to kick her legs up to get Dittirro off her body but Dittirro pushed her down
18 and S.M. hit her head on the headboard. Unbeknownst to S.M., Dittirro recorded one of
19 these rapes.

20 In May 2016, S.M. was contacted by a girl on Facebook, later identified as A.P.,
21 who told S.M. if she is contacted by the police, she is to say she does not know Dittirro.
22 S.M. asked A.P. why she contacted S.M. and A.P. told S.M. there was an "SD card that
23 had a bunch of nudes on it." A.P. told S.M. about a video showing S.M. and Dittirro
24 having sex. Because S.M. did not know about the video, S.M. did not believe Dittirro

1 would record her. A.P. then called S.M. and Ditirro got on the phone and told S.M. he was
2 in trouble with the cops and told her that “she doesn’t know him if something were to
3 happen.” Ditirro’s actions amounted to witness tampering and obstruction.

4 S.M. was shown pictures printed from Ditirro’s SD card. One picture was a screen
5 shot taken during a Skype chat between Ditirro and S.M. and depicts S.M. nude in her
6 bedroom and Ditirro’s face in the corner of the photograph. S.M. testified she did not know
7 he had captured screen shots of these chats. She said she was 15 years old in that picture,
8 and was certain of her age based on her bedroom décor.⁵

9 Inside the S.M. folder on Ditirro’s S.D. card are three subfolders: (1) “S” – which
10 contains 66 images of S.M. clothed, one being a picture of S.M. and Ditirro together; (2) “S
11 naked” – which contains 121 images, 91 of which depict S.M. nude or partially nude ; and
12 (3) “S skype” – which contains 156 screen shots of Skype communications, 65 of which
13 depict S.M. nude or partially nude and most showing Ditirro’s face.

14 While S.M. puts on a brave face, her victim impact statement shows her continued
15 turmoil over her “relationship” with Ditirro. S.M. recognizes that she was one of the first
16 girls victimized by Ditirro, and for that, she blames herself for not speaking up sooner. It is
17 also telling that *before* S.M. talks about her own distress, she remembers the pain shown on
18 the other victim’s faces and cares for their well-being. S.M. is particularly reflective as she
19 remembers seeing the photo of C.A. in the exhibit book: “She was tan with black hair with
20 a hand around her neck. Being forced to endure the pain of what he put her through was
21 written all over her face.” In fact, S.M. rightfully took solace in the fact that her face was
22

23 ⁵ S.M. has completed a victim impact statement, which is filed under seal as
24 Government’s Exhibit 3. Additionally, S.M. also provided the government with medical
documentation stating her need for therapy as a result of Ditirro’s sexual exploitation of her.
That document has been filed under seal as Government’s Exhibit 4.

not shown in the videos found in her folder. While she could clear identify herself, no one else will know it was her, in the event that Ditirro distributed these videos.⁶ The lingering effects of Ditirro's abuse continue to haunt S.M. – she crashed her brand new car after being distraught from her trial testimony, she needs mental health counseling, and her doctor has recommended a therapy animal to alleviate the anxiety she feels as she copes with her exploitation. S.M's mother is saddened that she “can't fix the hole in [her] daughter's heart and soul.”⁷

These are the kind, caring, compassionate girls that Ditirro targeted, victimized, and destroyed. And, to this day, these girls have unanswered questions: “All I could think was, why would he have taken advantage of us? Was there a reason for all of this? Was this a sick game? Why did he lie? Why fake so many emotions? Just FUCKING WHY?” They know they will never get answers to these questions, but they already saw during their testimony what Ditirro thought of himself written all over his face: “looking very smug with himself,” as if to say “what are you doing here? Didn't you like what I did to you?”

T.H.

In early 2013, when T.H. was 13 years old, she met Ditirro on Meet Me. Ditirro claimed he was 18 and the two began messaging back and forth. Ditirro quickly initiated sexual conversations with T.H. and ultimately asked to trade nude photographs over Kik. T.H. complied and sent nude photographs of herself to Ditirro over Kik at his request. During this time, T.H. lived in Arizona but she visited her relatives in Las Vegas in June 2013. Throughout that month, Ditirro and T.H. met up every day and had sex. On at least

⁶ The same cannot be said for the nude photos depicting S.M.

⁷ S.M.'s mother has completed a victim impact statement, which is filed under seal as Government's Exhibit 5.

1 two occasions to T.H.'s knowledge, Ditirro recorded having sex with her. Although T.H.
2 was aware of the recording, she can be seen in the videos covering her face and otherwise
3 looking away from the camera. The videos were recorded with Ditirro's phone.

4 On November 4, 2016, T.H. appeared at a family advocacy center in Arizona for an
5 interview with law enforcement. T.H. did not want to participate in the interview. T.H.
6 was told the interview was regarding Lonny Ditirro. T.H. said she knew the name but did
7 not want to provide any further information which would add charges or increase the
8 length of a prison term for Ditirro. T.H. ended the interview by saying she would like to
9 never be bothered about this situation again. In her victim impact letter, filed under seal as
10 Government's Exhibit 6, T.H. explains her reluctance to cooperate.

11
12 I was just one of his countless victims but coincidentally I was
13 also one of the few who were uprooted from our everyday lives
14 and called to testify in October 2018. I was first contacted by the
15 FBI in 2016. I declined to speak about this uncomfortable
situation and I remained silent until October 2018 when I was
served a subpoena outlining my mandatory appearance at the
trial that was set to commence a few weeks later. I remained
silent until trial for many reasons.

16 One of the main reasons being my lack of knowledge about who
17 Lonny was, even six years after he had victimized me. Up until
18 October of 2018 I was unaware that Lonny had preyed on me
19 solely because he is a child predator. I had no idea that he kept
20 videos of me as a child, in his possession for years. I was unaware
of all of the gruesome facts that were presented at trial, and I was
unaware that Lonny is aged well into his 30's. Had I known that
Lonny is a child predator, I would have participated in the case
much sooner than I did.

21 As T.H. explains, when she met Ditirro online, she never had a boyfriend or even
22 her first kiss. She "was a child." He manipulated her. What they had "was not a
23 relationship, it was a way for him to sexually abuse" her. At trial, T.H. testified that Ditirro
24

1 took her virginity when she was just 13 years old, and recorded these rapes against T.H.'s
2 will. According to T.H.,

3
4 In the moment, I felt very confused. I didn't know why he was
5 recording me, all I knew is that I did not want to be recorded. I
6 covered my face, shied away from the camera, I did everything I
7 thought might make him stop, but he didn't stop. He recorded
8 several different sexual acts involving me when I was only 13
9 years old, and then he kept them only for them to be discovered
10 by law enforcement years later.

11
12 As an adult, it is hard for me to comprehend that there are videos
13 of myself as a child having sex with a man in his 30's. Lonny
14 recorded these videos without my consent and then he tried to
15 pressure me into watching them. I was completely disgusted at
16 the fact that he recorded the videos, so I refused to watch them.
17 I never actually saw any portion of the videos until they were
18 played at trial.

19
20 Contents of the T.H. folder on Dittiro's SD card include 584 files – 579 images and
21 5 videos. Approximately 95 image files are of T.H. nude or partially nude. Four of the five
22 videos depict Dittiro and T.H. in what appears to be a girl's bedroom engaged in various
23 sex acts. During her testimony, T.H. identified this room as the place she stayed during her
24 trip to Las Vegas in June 2013. The videos show Dittiro having oral and vaginal sex with
T.H. Throughout the videos, T.H. can be seen covering her face and otherwise avoiding
the camera recording her.

A.P.

19
20 In July 2015, when A.P. was 15 years old, she met Dittiro on Meet Me. A.P. put
21 her accurate age on her Meet Me profile and Dittiro's profile stated that he was 15. The
22 two began messaging each other. Dittiro then encouraged A.P. to have Skype chats with
23 him. During some Skype chats, Dittiro asked A.P. to send him nude photographs and also
24 directed A.P. to take her clothes off and pose for him. Unbeknownst to A.P., Dittiro took

1 screen shots of these Skype conversations which depicted A.P.'s nude body.⁸ During the
2 course of their contact, A.P. began doubting Dittirro's claimed age. When she confronted
3 him, Dittirro provided his driver's license, but covered his date of birth. Dittirro also directed
4 A.P. to look at his Facebook profile, which stated his birthday was in 1992, making him
5 approximately 23 years old.

6 Subsequently, A.P. and Dittirro met in person. The sexual conversations continued
7 and, on one occasion, Dittirro tried to show A.P. the video he had recorded of raping R.B.⁹
8 Dittirro also showed A.P. a video he took when he raped C.A., who he said was 15 at the
9 time of the video.

10 After Dittirro's arrest in this case, he contacted A.P. and asked her to reach out to "a
11 girl in Texas." Dittirro told A.P. that he had traveled to Texas and had sex with a 15-year-
12 old girl and there were pornographic photographs and videos of her on his device. At
13 Dittirro's request, A.P. contacted the girl from Texas and asked her to lie to the FBI if they
14 came and asked her questions about Dittirro.

15 **Other Relevant Conduct and Considerations**

16 As stated above and shown at trial, Dittirro methodically organized and catalogued
17 his collection of photographs and videos of child exploitation. As the below screen shot of
18 a small portion of the folders contained on Dittirro's SD card demonstrates, the charged
19 victims are hardly the only victims of Dittirro's sexual exploitation. Rather, the charged
20 victims are simply those who have been identified by law enforcement at this time.

21
22 ⁸ The nude screen shots of A.P., which were subsequently found on the SD card, supported the charge of possession of child pornography.

23 ⁹ Although A.P. did not know R.B., she testified the video was of "R" and was taken
24 outside at night. A.P. also testified that Dittirro told her the video was taken at R.'s house when R. was 14. This description is consistent with the video depicting Dittirro's rape of R.B.



1 Aside from the charged victims, and the more than 30 other girls similarly sexually
2 exploited by Ditirro and catalogued in folders on the SD card that have not yet been
3 identified, Ditirro also victimized complete strangers. In a series of particularly disturbing
4 videos, Ditirro recorded “upskirt” videos of women walking on the Las Vegas Strip. These
5 images are contained in the government’s trial exhibits, but were not published to the jury.

6 Finally, the Court has seen some of the images of child pornography saved on
7 Ditirro’s SD card. What the Court cannot compare without seeing all the images is the
8 average age of the children depicted in those videos. Ditirro’s preferred age range is under
9 eight years old. Moreover, Ditirro’s preference is images and videos that depict sexual
10 humiliation of children, including adults ejaculating on children’s faces and adult men
11 penetrating female children’s vaginas with an erect penis.

12 III. Discussion

13 A. Application of Sentencing Guidelines

- 14 i. The enhancement for committing an offense involving a minor
15 between 12-16 years of age is appropriate under U.S.S.G.
§ 2G2.1(b)(1)(B).

16 A two-level increase is appropriate under U.S.S.G. § 2G2.1(b)(1)(B) if the sexual
17 exploitation involved a minor between the age of 12 and 16. Here, all four of the charged
18 sexual exploitation victims were between the age of 12 and 16 when they were exploited.
19 As such, this enhancement is appropriate and should be applied.

20 In his sentencing memorandum, Ditirro contends that the evidence concerning the
21 age of S.M. is insufficient to support this enhancement as to her. ECF No. 138, p. 6-7. He
22 contends that the enhancement should therefore be stricken and his total offense level
23 should be reduced to 41. *Id.* Ditirro is incorrect on a number of levels. First, S.M.’s
24 testimony is sufficient for this Court to find, as a matter at sentencing, that this

enhancement applies. Second, and perhaps more importantly, even if this Court agrees and strikes the recommended enhancement, it does not change Ditirro's total offense level. The challenged two-point enhancement concerns Count Three/Group Three. That group results in an adjusted offense level of 44 and is the greatest of the adjusted offense levels. However, even if the adjusted offense level was a 42 as a result of eliminating the challenged enhancement, there would still be a four-point increase under U.S.S.G. 3D1.4 and a five-point increase under U.S.S.G. 4B1.5(b)(1). As such, the total offense level would be 51, which would then be reduced to level 43 under the Guidelines. As such, Ditirro's challenge is a distinction without a difference.

ii. The enhancement for commission of a sexual act is appropriate under U.S.S.G. § 2G2.1(b)(1)(B)(i) and (ii).

A four-level enhancement is applied to the commission of a sexual exploitation offense if it includes a sexual act prohibited under 18 U.S.C. 2241(a). That statute proscribes a person from knowingly engaging in a sexual act with another person by force or threat of death, substantial bodily injury, or kidnapping. Here, the four-level enhancement is applicable to all four of the charged sexual exploitation victims. R.B. and C.A. testified that Ditirro had sex with them through use of force. S.M. also testified that, at least on one occasion, Ditirro had sex with her through use of force. Finally, T.H. has also indicated to this Court, through her written letter, that she was manipulated and forced to have sex with Ditirro. As such, this four-level enhancement is appropriate and should be applied.

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iii. The enhancement for sadistic and masochistic depictions is appropriate under § 2G2.1(b)(4).

Ditirro's production of child pornography included the vaginal rapes of his victims. As such, and on that basis alone, this enhancement properly applies. Further, Ditirro's child pornography collection included multiple files depicting the anal and vaginal rape of prepubescent minors, as well as additional acts of humiliation as described above. The nature of these files also supports a finding that this enhancement applies.

iv. The enhancement for obstruction of justice is appropriate under U.S.S.G. § 3C1.1.

An enhancement for obstruction as to Count 3 is supported by Ditirro's efforts to tamper with S.M. At his direction, A.P. contacted S.M. and told her to deny knowing Ditirro if law enforcement spoke to her. When S.M. questioned why, A.P. stated that Ditirro had nude photographs of S.M. taken when she was a minor and that law enforcement had discovered the photos. Ditirro also directly contacted S.M. in an effort to obstruct law enforcement's efforts to investigate the case. These efforts to obstruct justice and the investigation into Ditirro's sexual exploitation of S.M. warrant the obstruction of justice enhancement.

v. The enhancement for material depicting prepubescent children is appropriate under U.S.S.G. § 2G2.2(b)(2).

Ditirro's collection of child pornography included photos and videos depicting prepubescent minors engaged in sexual acts. Some of these files are described in the Presentence Investigation Report and some of the images were admitted as evidence during trial. As such, this enhancement is appropriate.

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- vi. The enhancement for engaging in a pattern of activity involving the sexual abuse or exploitation of a minor is appropriate under U.S.S.G. § § 2G2.2(b)(5) and 4B1.5(b)(1).

An enhancement under U.S.S.G. § § 2G2.2(b)(5) and 4B1.5(b)(1) is appropriate when the defendant engaged in at least two separate instances of sexual abuse of exploitation of a minor. A pattern of conduct can be established whether or not it involved charged offenses or different victims. Here, there are four charged sexual exploitation victims. Each of those victims testified to being exploited multiple times and the contents of Ditiirro's SD card confirm the testimony of the charged victims. Additionally, although A.P.'s sexual exploitation is not a charged offense,¹⁰ there is no dispute that she was also sexually exploited. Finally, there are countless other unknown victims whose exploitation at the hands of Ditiirro was documented in the same manner as the charged victims. As such, the enhancements for engaging in a pattern of sexual abuse should apply.

- vii. The enhancement for use of a computer is appropriate under U.S.S.G. 2G2.2(b)(6).

The testimony at trial established that Ditiirro used a smart phone to commit the charged offenses and used an SD card to retain evidence of his offenses. Both qualify as "computers" under this enhancement.

- viii. The enhancement for 600 or more images is appropriate under U.S.S.G. 2G2.2(b)(7)(D).

As calculated in the plea agreement, and based on the testimony presented at trial, Ditiirro's offenses involved 3,404 images. As such, this enhancement should apply.

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¹⁰ Again, Ditiirro's possession of the child pornography images he produced of A.P. supported the charge of possession of child pornography.

- ix. The enhancement for multiple counts is appropriate under U.S.S.G. § 3D1.4(a).

Finally, the multiple count adjustment is properly applied. The four charges of sexual exploitation do not group under the Guidelines and, as the individual offenses are properly calculated, the multiple count adjustment is also accurate. As a result, Ditiirro's total offense level is properly determined to be 53. However, under the Guidelines, his offense level is properly reduced to 43.

B. Term Of Imprisonment

The goal of sentencing is to “‘impose a sentence sufficient but not greater than necessary’ to reflect the seriousness of the offense, promote respect for the law, and provide just punishment; to afford adequate deterrence; to protect the public; and to provide the defendant with needed . . . correctional treatment.” *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (quoting 18 U.S.C. § 3553(a)). The Court considers the “the nature and circumstances of the offense and the history and characteristics of the defendant,” “the need for the sentence imposed,” “the kinds of sentences available,” the applicable sentencing guideline range, any pertinent policy statement, sentences imposed on other similarly situated defendants, and the need for victim restitution. 18 U.S.C. § 3553(a). Considering the relevant factors, the Court should impose a 140-year sentence.

A 140-year sentence is the only thing that can provide deterrence and protect the community from Ditiirro, who still refuses to accept that he destroyed the lives of countless young girls. A lengthy sentence is the only thing that can impress upon Ditiirro that this criminal behavior is not tolerable in society and assure a measure of safety to the community. A statutory maximum sentence is sufficient, but not greater than necessary, to

1 reflect the seriousness of the offense, promote respect for the law, provide just punishment
2 for the offense, afford adequate deterrence, and to protect the public.

3 In a recent case, Thomas Goodman who pleaded guilty to producing child
4 pornography of *only three* victims was sentenced to 260 years.¹¹ Goodman pleaded guilty to
5 eight counts of production for three victims and one count of possession of child
6 pornography. A sentence of 260-years was reached in Goodman by imposing the statutory
7 maximum sentence of 30 years on each of the eight counts of production and the statutory
8 maximum sentence of 20 years on the single count of possession to run consecutive. The
9 government's requested sentence in this case mirrors the same request – statutory
10 maximum on each count to run consecutive. The government's requested sentence in this
11 case reflects the independent, temporally and legally distinguishable acts that support each
12 count of conviction, and to give adequate consideration to the need to reflect the
13 seriousness of each offense against each victim separately, to promote respect for the law,
14 and to provide just punishment.

15 Comparing Goodman's case to Dittiro's shows the reasonableness of the
16 government's request. In *Goodman*, the videos and photos depicted two six-year-old
17 children as well as images and videos of Goodman molesting a toddler-aged child. In
18 sentencing Goodman, the district court accurately described the behavior in creating the
19 child pornography as a "level of depravity [that] is beyond comprehension." Here,
20 similarly, Dittiro's actions have gone well beyond the possession of child pornography and

21
22 ¹¹ Rhode Island Man Gets 260 Years for Making Child Porn, available at
23 [https://www.usnews.com/news/best-states/rhode-island/articles/2019-03-22/rhode-](https://www.usnews.com/news/best-states/rhode-island/articles/2019-03-22/rhode-island-man-gets-260-years-for-making-child-porn)
24 [island-man-gets-260-years-for-making-child-porn](https://www.usnews.com/news/best-states/rhode-island/articles/2019-03-22/rhode-island-man-gets-260-years-for-making-child-porn); *see also* Rhode Island man sentenced to
260 years in federal prison in ICE HSI Boston child exploitation case, available at
[https://www.ice.gov/news/releases/rhode-island-man-sentenced-260-years-federal-prison-](https://www.ice.gov/news/releases/rhode-island-man-sentenced-260-years-federal-prison-ice-hsi-boston-child-exploitation)
[ice-hsi-boston-child-exploitation](https://www.ice.gov/news/releases/rhode-island-man-sentenced-260-years-federal-prison-ice-hsi-boston-child-exploitation).

1 exhibit a level of depravity that defies comprehension. He has also escalated beyond
2 receiving and distributing child pornography, engaging in an illicit market that re-
3 victimizes those who have suffered sexual abuse by forcing them to not only re-live those
4 traumatic events, but also live with the knowledge that others have seen them at their most
5 vulnerable moments, and have received enjoyment from those images. Ditirro has taken
6 the next egregious step and *created* new child exploitative material. He then preserved and
7 organized his collection, to be referred to at his convenience. He has thus caused the
8 charged victims, as well as those who have not yet been identified, to wonder when
9 someone looks at them for a second too long, or seems to smile knowingly, whether that
10 person has seen the images and videos documenting Ditirro's sexual exploitation. He has
11 not only robbed the victims of their innocence, but also permanently deprived them of a
12 sense of security.

13 While Goodman only had *three* victims, Ditirro has **48 victims**. Unlike Goodman,
14 who readily admitted his guilt and accepted his punishment, Ditirro continues to obfuscate
15 and attempt to detract from his undeniable guilt. Ditirro's "smug" arrogance caused five
16 young girls to be re-victimized repeatedly when having to re-live and recount their sexual
17 assaults at his hands. Although Goodman's victims were younger, Goodman's actions
18 amounted to molestation and sexual contact rather than sexual penetration and rape.
19 Ditirro forcibly raped two girls and used deception to groom two others into "willingly"
20 engaging in their own sexual assaults. Ditirro is exponentially worse than a typical child
21 molester who feels some level of guilt for the unquestionable depravity in which he
22 engages. Ditirro takes sick joy and pleasure from forcing his victims to testify,
23 demonstrating "his desire to remain in control of his victims." Accordingly, the
24 government's request for a 140-year sentence for Ditirro's convictions is consistent with the

1 sentences imposed on similarly situated defendants across the country, and it is
2 substantively reasonable and warranted. A sentence of 140-years serves a strong deterrent
3 purpose to Ditirro and other pedophiles and child molesters like him who believe they can
4 “remain in control” by watching their victims reliving the worst horrors of their lives.

5 Further, it is important for this Court to consider Ditirro’s repeated refusal to admit
6 any wrongdoing and accept responsibility for his actions. Notwithstanding the
7 overwhelming testimonial and forensic evidence facing Ditirro, he refused to admit the
8 truth. To be clear, the government is not asking for a trial tax, or for the Court to punish
9 Ditirro exercising his constitutional rights to a trial. But, as the Ninth Circuit has noted,
10 exercising a constitutional right is very different than putting forward a factually
11 unsupported and frivolous defense to distract from guilt. Ditirro’s attempt at trial to claim
12 that the forensic evidence was somehow manufactured or altered is nothing more than a
13 delusion of grandeur.¹² Before trial Ditirro ridiculously claimed he was innocent because
14 the girls were his “girlfriends.” Indeed, Ditirro even went so far as to claim, in a letter
15 written directly to this Court, that he was in a legitimate relationship with R.B. after she
16 was 16 years of age. *See* ECF No. 48. Of course, this claim was entirely false. But even if
17 true, Ditirro’s claim that he believed R.B. to be 16 when he sexually exploited here still
18 demonstrated his undeniable guilt in producing child pornography. Still, Ditirro refused to
19 admit the logical legal implications of his own statements and proceeded to trial, requiring
20 the victims to testify about their graphic victimization in a room filled with strangers,

21
22 ¹² As government counsel argued in rebuttal, any argument regarding the chain of
23 custody for the SD card is futile when considered in light of the incontrovertible fact that
24 the photos and videos contained on that SD card clearly depict Ditirro having sex with
underage females. Law enforcement could have found the SD card on the street with no
explanation as to how it got there and the evidence would have still unequivocally
established Ditirro’s guilt.

1 people they met in the days before trial, this Honorable Court, and Ditirro. Of course, all of
2 Ditirro's factually unsupportable defenses were flatly rejected by the jury. Ditirro's refusal
3 to accept responsibility up to the present day, even in light of what is painfully obvious to
4 any reasonable observer of the trial proceedings, should be considered by this Court with
5 great concern. In light of Ditirro's obstinate refusal to acknowledge his crimes and accept
6 responsibility, this Court can have no assurance that anything other than a period of
7 incarceration spanning Ditirro's natural life will deter him from re-committing the offenses
8 for which he has been found guilty. If Goodman was deserving of 260 years, then
9 sentencing Ditirro to 140 years will avoid sentencing disparities and will impose a sufficient
10 but not greater than necessary sentence.

11 **C. Supervised Release**

12 The government concurs that Ditirro be ordered to serve a lifetime term of
13 supervised release as to all five counts. If the Court imposes the government's requested
14 sentence, it is unlikely that Ditirro will serve any term of supervision. However, the
15 egregiousness and escalation of Ditirro's conduct warrants the maximum term of
16 supervision as a matter of fact and principle. The facts of this case strongly suggest that
17 Ditirro's rehabilitation, success, and any likelihood to re-offend will be reduced if he
18 remains accountable for his rehabilitation under supervision.

IV. Conclusion

This Court should give proper weight to the significance of Ditirro's crimes, the facts of this case, and the statements of the victims and their families. Doing so will lead to the conclusion that a statutory maximum sentence is not only appropriate, but also fundamentally sufficient but not greater than necessary to meet the goals of sentencing. Ditirro robbed these girls of their childhoods and by all indications the peace and happiness of their adult lives as well. He did so for no other reason than his sick pedophilic pleasure. He is a criminal. He is a sexual predator. He is a thief who stole the innocence of at least 48 children. Society must be protected from him for as long as humanly possible, especially given his utter lack of remorse for any of his actions.

The United States requests that this Court sentence Ditirro to 140 years' custody and lifetime supervision. Any downward adjustment would negate the seriousness of this offense, fail to deter future misconduct, fail to protect the public, and result in unwarranted sentencing disparities. Based on the totality of circumstances, the requested 140-year sentence is sufficient but not greater than necessary to comply with the §3553 factors.

Dated this the 24th day of April 2019.

Respectfully Submitted,

NICHOLAS A. TRUTANICH
United States Attorney

//s//

ELHAM ROOHANI
CHRISTOPHER BURTON
Assistant United States Attorneys

Certificate of Service

I hereby certify that on April 24, 2019, I electronically filed the foregoing Sentencing Memorandum with the Clerk of the Court for the United States District Court for the District of Nevada using the CM/ECF system.

s/ Christopher Burton
CHRISTOPHER BURTON
Assistant United States Attorney
United States Attorney's Office

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2:16-cr-216-KJD-VCF - October 17, 2018

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3

4 UNITED STATES OF AMERICA,)
 5 Plaintiff,) Case No. 2:16-cr-216-KJD-VCF
 6 vs.) Las Vegas, Nevada
 7 LONNY JOSEPH DITIRRO, JR.,) Wednesday, October 17, 2018
 8 Defendant.) Courtroom 4A, 9:18 a.m.
 9) JURY TRIAL, DAY THREE
) O R I G I N A L

10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 BEFORE THE HONORABLE KENT J. DAWSON,
 12 SENIOR UNITED STATES DISTRICT JUDGE

13
14 APPEARANCES:

15 For the Plaintiff:

16 UNITED STATES ATTORNEY'S OFFICE
 17 BY: ELHAM ROOHANI, AUSA
 CHRISTOPHER J. BURTON, AUSA
 18 501 Las Vegas Boulevard South, Suite 1100
 Las Vegas, NV 89101
 19 (702) 388-6336

20 (Appearances continued on Page 2)

21 COURT REPORTER:

22 Heather K. Newman, RPR, CRR, CCR #774
 United States District Court
 333 Las Vegas Boulevard South, Room 1334
 23 Las Vegas, Nevada 89101
 (702) 471-0002 or HN@nvd.uscourts.gov
 24

25 Proceedings reported by machine shorthand, transcript produced
 by computer-aided transcription.

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APPEARANCES CONTINUED:

For the Defendant:

LAW OFFICE OF BRIAN J. SMITH, Ltd.
BY: BRIAN JAMES SMITH, ESQ.
520 South Fourth Street, Suite 340
Las Vegas, NV 89101
(702) 380-8248

Also present:

Sue Flaherty, Case Agent
Federal Bureau of Investigation

Adrian Leon Mare, Forensic IT Expert (Defense)

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1 LAS VEGAS, NEVADA; WEDNESDAY, OCTOBER 17, 2018; 9:18 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 (Outside the presence of the jury at 9:18 a.m.:)

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Go ahead, be seated. Continue what you
7 were doing.

8 When you finish looking at those, let me know. We'll
9 make a record on objections, if any.

10 (Brief pause in proceedings.)

11 THE COURT: Are you ready to go?

12 MR. SMITH: Yes, Your Honor.

13 THE COURT: Okay. Objections?

14 MS. ROOHANI: Your Honor, the government has no
15 objections to the instructions as proposed by the Court.

16 MR. SMITH: Your Honor, I have something which I
17 neglected to bring up last night in my e-mail to Andrew and it
18 really pertains, I think, to jury Instruction No. 22, and we
19 talked about this at the very beginning of the case, that the
20 Ninth Circuit case law has limited carve-out exception for the
21 defendant if he had a good faith belief that the young women
22 were over the age of 18. I'd like to see that added to that
23 instruction.

24 THE COURT: Well, there has been no evidence adduced
25 that would support giving an instruction.

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1 MS. ROOHANI: And, Your Honor, that is the
2 government's position. Under the Ninth Circuit authority,
3 there has to be some evidence that came in during trial that
4 would support giving that instruction and, in fact, all the
5 evidence has been exactly to the contrary of that, so we would
6 object to that.

7 THE COURT: Yeah. I see no -- there is no evidence to
8 support giving that kind of an instruction, so, your objection
9 is noted.

10 MR. SMITH: Thank you.

11 THE COURT: Anything else?

12 MR. SMITH: Just that this -- at this point in time,
13 Your Honor, I'm going to make a Rule 29 motion, for the record.

14 THE COURT: Okay. All right.

15 The Court finds that, based on the evidence adduced, a
16 reasonable jury could find beyond a reasonable doubt the
17 defendant committed the -- all of the counts of which he --
18 with which he is charged and, so, the motion is denied.

19 MR. SMITH: Thank you, Judge.

20 MS. ROOHANI: Your Honor, yesterday evening we
21 received ECF Number 114, which is a letter that was written by
22 the defendant to Your Honor. It was filed under seal, but I
23 believe it was filed under seal because we were already in
24 trial. I'm not exactly sure why it was filed under seal by the
25 Clerk of the Court, but it was provided to us by your law

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1 clerk. If Your Honor would allow me to make a specific record
2 as to the certain arguments that the defendant has made because
3 I believe that they're baseless, but I want to make sure that
4 the record is clear once this goes up to the circuit and
5 potentially any type of collateral challenge.

6 THE COURT: Yes. The -- I believe the thought behind
7 the initial sealing was that trial would be underway, that it
8 could be publicly accessed and -- and really is a document the
9 Court could order stricken because it's an ex parte
10 communication and he is represented by counsel, but we did feel
11 that it needed to be disclosed to counsel because it was an
12 ex parte communication. So you can go ahead and make whatever
13 record you wish on -- on that.

14 MS. ROOHANI: Thank you, Your Honor.

15 And, Your Honor, and I agree with you, I believe that
16 this is filed in violation of the local rule, aside from the
17 fact that it's an ex parte communication. It includes legal
18 argument. Because the defendant is represented by counsel, any
19 type of legal argument that comes to the Court has to come
20 through his counsel and, so, at a bare minimum we would ask
21 that you strike or certainly disregard any type of legal
22 argument that's set forth in this particular document.

23 THE COURT: I'll make the record clear, I didn't read
24 it.

25 MS. ROOHANI: Okay. Fair enough, Your Honor.

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1 And, so, in any event, there's a couple of arguments
2 that are made and I want to make clear that, first of all,
3 there's an allegation that I have not produced all the
4 discovery in this case, which is absolutely false and I -- I
5 encourage Your Honor to discuss this with Mr. Smith.
6 Mr. Ditirro alleges that we did not turn over the cell phone
7 dump of R [REDACTED] B [REDACTED]'s phone. That's false. That was made
8 available to Mr. Smith. The text messages that are in question
9 were also made available to Mr. Smith.

10 I'll note that Mr. Ditirro has been in custody this
11 entire time, so he has no idea what has been made available to
12 his counsel at the FBI lab where we keep contraband. And, so,
13 I would submit, Your Honor, that at a bare minimum, it might be
14 appropriate to ask Mr. Smith whether he has -- all of this
15 information has been made available to him.

16 The second is, is that the defendant alleges that
17 because we have not produced these text messages, which I would
18 submit, Your Honor, that are -- this is vague at best, but we
19 have produced it in any event, quite frankly, Mr. Smith was
20 allowed to cross-examine R [REDACTED] B [REDACTED] about text messages.
21 He was able to cross-examine any other witnesses regarding text
22 messages, including Detective Miller. And, so, at a bare
23 minimum, the defendant's -- to the extent that that is a theory
24 of the defense, that has been able to be probed by Mr. Smith
25 during his cross-examination of government witnesses and so

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1 there's no type of deficient performance or anything related to
2 that in any event.

3 Mr. Ditirro also claims that Detective Miller and
4 Special Agent Flaherty exerted undue influence on multiple
5 witnesses. Mr. Smith was able to cross-examine
6 Detective Miller and Special Agent Flaherty as well as all of
7 the government witnesses. This is something that he could have
8 probed. Quite frankly, Your Honor, my personal belief is that
9 the reason he didn't get into it is because there's absolutely
10 no evidence of this. Quite frankly, the victims testified
11 consistent, under oath, subject to cross-examination,
12 consistent with every single thing that they told Special Agent
13 Flaherty and Detective Miller and, so, I would submit,
14 Your Honor, that at a bare minimum, that has no bearing on the
15 matter at hand, but more importantly, that would also not give
16 rise to deficient performance or any type of violation --
17 constitutional violation -- because Mr. Smith was given the
18 ability to cross-examine the government witnesses regarding
19 that.

20 The defendant, again, raises arguments that
21 demonstrate a fundamental lack of understanding of Fourth
22 Amendment jurisprudence regarding inadmissibility of derivative
23 illegal searches, of search warrants and what their purposes
24 are, and inevitable discovery, and I think that Your Honor and
25 Magistrate Judge Ferenbach have clearly delineated what the

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1 nature of your understanding -- your rulings are, and, so, I
2 believe that the record is fully set forth for the
3 Ninth Circuit to consider that in any event.

4 More importantly, to the extent that he claims a
5 *Franks* violation regarding what Ms. Ismail had told
6 Detective Tooley, I'll note that Mr. Smith, when he came on
7 this case, he requested of me if he would be able to file that
8 motion, notwithstanding the fact that the motions deadline had
9 passed. But in the interest of giving the defendant a fair
10 shot and having everything litigated before the district court
11 before we ever went to trial, Mr. Smith and I had that
12 conversation, he filed that motion. We fully briefed it. He
13 filed an appeal of that. We fully briefed it before,
14 Your Honor. And, so -- and on top of that, he had an
15 opportunity to fully cross-examine Ms. Ismail during the course
16 of trial.

17 Mr. Ditirro requested that Ms. Ismail be removed as a
18 witness because she had no personal knowledge of the card.
19 Again, Your Honor, that goes to the weight of evidence.
20 Mr. Smith was able to cross-examine her, and that is something
21 that -- certainly that the jury can consider during their
22 deliberations.

23 The last matter, Your Honor, is that Mr. Ditirro
24 alleges that there was some type of evidence that the contents
25 of the card had been tampered with after it had been impounded.

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1 That appears on Page 3 of this document, and he states in here,
2 I have more information for his forensic examiner that we have
3 not had -- discussed because I haven't had enough time with him
4 [as read].

5 I'll note, Your Honor, that the government has
6 repeatedly given Mr. Ditirro the opportunity to ask for a
7 continuance to prepare for his defense. Just the opposite has
8 happened. He has exercised his speedy trial rights. He has
9 demanded to go to trial. He forced me to file a Motion to
10 Continue when I had been preparing for trial previously. Even
11 as much as last week he could have raised this before the
12 Court. He chose not to. And, so, in any event, I believe,
13 Your Honor, all of that aside, this defense was -- what I
14 surmise this defense was regarding the tampering, as best as I
15 can glean, is that this has to do with the "modified" and
16 "created" and "accessed" dates, which is a full line of
17 questioning that Mr. Smith went into with the government's
18 forensic examiner. Again, this is fully fleshed out, so
19 notwithstanding the fact that Mr. Ditirro did not provide any
20 type of -- and, again, Your Honor, I don't blame Mr. Smith for
21 this because it's very clear that Mr. Ditirro is not taking his
22 advice and Mr. Ditirro is either not fully communicating with
23 him or is being obstreperous and not listening to anything that
24 Mr. Smith is telling him, but, it seems as though Mr. Ditirro
25 thinks that the evidence means one thing when, in fact, the

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1 experts who are looking at this evidence believe that it means
2 something else.

3 Again, I'll note, Your Honor, Mr. Ditirro has never
4 viewed the forensic evidence in this case. He has been in
5 custody. The forensic evidence in this case constitutes
6 contraband. Under 3509(m), he's not entitled to have access to
7 this at the jail. He never requested to have access to this
8 during the course of preparation for trial. I do know that
9 Mr. Smith and Mr. Mare repeatedly went out to the FBI lab to
10 look at this evidence, and if his expert was not willing to
11 provide an expert notice and provide an expert report to the
12 Court and be -- to the government and be subject to
13 cross-examination, I don't believe that there is a basis for
14 this. And, again, Your Honor, he was able to -- Mr. Smith did,
15 in fact, cross-examine Forensic Examiner Trafford regarding
16 this matter thoroughly and Forensic Examiner Trafford provided
17 a response that if he didn't like that response, he could have
18 called Mr. Mare, at least at a bare minimum, as a lay witness,
19 or the defendant could have elected to testify, but he elected
20 to not do that and to abide by -- wisely, in my opinion, abide
21 by the advice of counsel.

22 And, so, as to those arguments, Your Honor, I just
23 wanted to make clear that I don't believe that there's any
24 basis for the Court to reconsider anything.

25 I resent the accusation that the government has

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1 improperly put evidence before this Court regarding
2 Mr. Ditirro's relationship -- what he calls a consensual
3 relationship with R [REDACTED] B [REDACTED]. Your Honor, you heard her
4 testimony yesterday. She was 15 years old when the defendant
5 raped her, and it is rape under the state of Nevada. He lied
6 to her about her -- his age, and therefore she could not give
7 consent legally and if, in fact, she gave factual consent, that
8 too would not be sufficient because he induced that consent by
9 lying to her about his age. And, so, I submit, Your Honor,
10 that as a matter of law, that descriptor is correct as to
11 R [REDACTED] B [REDACTED]. And, so, I wanted to make clear the
12 government's position on those things.

13 Thank you.

14 THE COURT: Thank you.

15 Mr. Smith, do you agree that you were provided with
16 the production that has been represented occurred by the
17 government?

18 MR. SMITH: Yes, I do, Your Honor.

19 THE COURT: All right.

20 MR. SMITH: And I also want to say that Mr. Mare has
21 worked assiduously on this case and has been in almost daily
22 contact with me regarding his examination of the evidence and
23 his opinion of it. The decision not to call him as either a
24 lay witness or an expert witness was a strategic one, but he
25 has been here throughout the trial to assist me, and he has

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1 done that because as I indicated before, my knowledge of IT
2 is -- is very minimal. It's very scant, so. . .

3 I would point out to the Court that Ms. Roohani is
4 correct to some extent concerning whether or not my advice is
5 being followed or paid attention to. I didn't want to go to
6 trial on this date. I wanted more time with this. I wanted
7 more time with Mr. Mare. Mr. Ditirro would not consent to
8 another continuance. So, we were put in the position where we
9 had to go to trial, and we didn't -- we couldn't do anything
10 about that. It was his choice, his call, and it was his right
11 to demand a trial at that time. He told me no more
12 continuances, that's it, I want to go to trial. I said, okay,
13 that's not what I would advise you to do, but, so be it if
14 that's what you want.

15 I'd also like to point out to the Court one last
16 thing. The letter that Ms. Roohani is talking about was seen
17 by me for the first time last night in an e-mail from -- from
18 your clerk, from Andrew. I don't mean to be disrespectful, but
19 I don't remember your last name. I should be calling you
20 Mr. . . .

21 THE COURT: It's okay. It's Mr. Clark, but. . .

22 MR. SMITH: Clark?

23 THE COURT: Yes.

24 MR. SMITH: Okay. When Mr. Clark sent me that e-mail,
25 that's the first time I saw that letter. That's the first time

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1 I had any knowledge that that letter was written.

2 THE COURT: And that is not surprising based on the
3 observations that I have made during the course of the trial,
4 and I will say that I -- the Court has observed that the
5 defendant has been communicating with Mr. Mare throughout the
6 course of the trial and that Mr. Mare was particularly
7 attentive to the testimony of the government's forensic expert,
8 making notes and communicating with the defendant throughout.

9 So, thank you.

10 MS. ROOHANI: Thank you, Your Honor.

11 THE COURT: We'll call in the jury.

12 (Brief pause in proceedings.)

13 (Jury returned to courtroom at 9:40 a.m.)

14 THE COURT: Please be seated. The record will reflect
15 the presence of the jury.

16 Now that the parties have concluded their presentation
17 of evidence, it is the duty of the Court to instruct you on the
18 law. So, I will read the jury instructions to you. You're
19 being handed copies, which you can follow along.

20 (Brief pause in proceedings.)

21 THE COURT: "JURY INSTRUCTION NO. 1.

22 "Members of the jury, now that you've heard all the
23 evidence, it is my duty to instruct you on the law that applies
24 to this case. A copy of these instructions will be available
25 in the jury room for you to consult.

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1 "It is your duty to weigh and to evaluate all the
2 evidence received in the case and, in that process, decide the
3 facts. It is also your duty to apply the law as I give it to
4 you to the facts as you find them, whether you agree with the
5 law or not. You must decide the case solely on the evidence
6 and the law and must not be influenced by any personal likes or
7 dislikes, opinions, prejudices, or sympathy. You will recall
8 that you took an oath promising to do so at the beginning of
9 the case.

10 "You must follow all these instructions and not single
11 out some and ignore others; they are all important. Please do
12 not read into these instructions or into anything I may have
13 said or done any suggestion as to what verdict you should
14 return. That is a matter entirely up to you.

15 "JURY INSTRUCTION NO. 2.

16 "The Indictment is not evidence. The defendant has
17 pled not guilty to the charges. The defendant is presumed to
18 be innocent unless and until the government proves the
19 defendant guilty beyond a reasonable doubt. In addition, the
20 defendant does not have to testify or present any evidence to
21 prove innocence. The government has the burden of proving
22 every element of the charges beyond a reasonable doubt.

23 "JURY INSTRUCTION NO. 3?

24 "A defendant in a criminal case has a constitutional
25 right not to testify. You may not draw any inference of any

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1 kind from the fact that a defendant did not testify.

2 "JURY INSTRUCTION NO. 4.

3 "Proof beyond a reasonable doubt is proof that leaves
4 you firmly convinced the defendant is guilty. It is not
5 required that the government prove guilt beyond all possible
6 doubt.

7 "A reasonable doubt is a doubt based upon reason and
8 common sense and is not based on -- purely on speculation. It
9 may arise from a careful and impartial consideration of all the
10 evidence, or from lack of evidence.

11 "If after a careful and impartial consideration of all
12 the evidence, you are not convinced beyond a reasonable doubt
13 that a defendant is guilty, it is your duty to find the
14 defendant not guilty. On the other hand, if after a careful
15 and impartial consideration of all the evidence, you are
16 convinced beyond a reasonable doubt that the defendant is
17 guilty, it is your duty to find the defendant guilty.

18 "JURY INSTRUCTION NO. 5.

19 "The evidence you are to consider in deciding what the
20 facts are consists of:

21 "1. The sworn testimony of any witness;

22 "2. The exhibits received in evidence; and

23 "3. Any facts to which the parties have agreed.

24 "JURY INSTRUCTION NO. 6.

25 "In reaching your verdict you may consider only the

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1 testimony and exhibits received in evidence. The following
2 things are not evidence and you may not consider them in
3 deciding what the facts are:

4 "1. Questions, statements, objections, and arguments
5 by the lawyers are not evidence. The lawyers are not
6 witnesses. Although you must consider a lawyer's question to
7 understand the answers of a witness, the lawyer's questions are
8 not evidence. Similarly, what the lawyers have said in their
9 opening statements, will say in their closing arguments, and at
10 other times is intended to help you interpret the evidence, but
11 it is not evidence. If the facts as you remember them differ
12 from the way the lawyers state them, your memory of them
13 controls.

14 "2. Any testimony that I have excluded, stricken, or
15 instructed you to disregard is not evidence.

16 "3. Anything you may have seen or heard when the
17 Court was not in session is not evidence. You are to decide
18 the case solely on the evidence received at the trial.

19 "4. You have heard evidence that I instructed to be
20 admitted only for a limited purpose. Therefore, you must
21 consider that evidence only for that limited purpose and for no
22 other -- and not for any other purpose.

23 "JURY INSTRUCTION NO. 7.

24 "Evidence may be direct or circumstantial. Direct
25 evidence is direct proof of a fact, such as testimony by a

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1 witness about that witness personally saw or heard or did.
2 Circumstantial evidence is indirect evidence, that is, it is
3 proof of one or more facts from which you can find another
4 fact.

5 "You are to consider both direct and circumstantial
6 evidence. Either can be used to prove any fact. The law makes
7 no distinction between the weight to be given to either direct
8 or circumstantial evidence. It is for you to decide how much
9 weight to give to any evidence.

10 "JURY INSTRUCTION NO. 8.

11 "Inferences are simply deductions or conclusions which
12 reason and common sense lead the jury to draw from the evidence
13 received in the case.

14 "JURY INSTRUCTION NO. 9.

15 "In deciding the facts in this case, you may have to
16 decide which testimony to believe and which testimony not to
17 believe. You may believe everything a witness says, or part of
18 it, or none of it.

19 "In considering the testimony of any witness, you may
20 take into account:

21 "1. The witness' opportunity and ability to see or
22 hear or know the things testified to;

23 "2. The witness' memory;

24 "3. The witness' manner while testifying;

25 "4. The witness' interest in the outcome of the case,

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1 if any;

2 "5. The witness' bias or prejudice, if any;

3 "6. Whether other evidence contradicted the witness'
4 testimony;

5 "7. The reasonableness of the witness' testimony in
6 light of all the evidence; and

7 "8. Any other factors that bear on believability.

8 "If you decide that a witness has deliberately
9 testified untruthfully about something important, you may
10 choose not to believe anything that witness said. On the other
11 hand, if you think the witness testified untruthfully about
12 some things but told the truth about others, you may accept the
13 part you think is true and ignore the rest.

14 "The weight of the evidence as to a fact does not
15 necessarily depend on the number of witnesses who testify.
16 What is important is how believable the witnesses were, and how
17 much weight you think their testimony deserves.

18 "JURY INSTRUCTION NO. 10.

19 "The Indictment charges that the offense alleged in
20 Count One of the Superseding Indictment was committed beginning
21 on a date unknown and continuing to on or about July 10th,
22 2014.

23 "The Indictment charges that the offense alleged in
24 Count Two of the Superseding Indictment was committed on a date
25 unknown and continuing to on or about March 3rd, 2015.

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1 "The Indictment charges that the offense alleged in
2 Count Three of the Superseding Indictment was committed on a
3 date unknown and continuing to on or about August 12th, 2015.

4 "The Indictment charges that the offense alleged in
5 Count Four of the Superseding Indictment was committed
6 beginning on a date unknown and continuing to on or about
7 August 14th, 2014.

8 "The Indictment charges that the offense alleged in
9 Count Five of the Superseding Indictment was committed
10 beginning on a date unknown and continuing to on or about
11 September 10th, 2015.

12 "Although it is necessary for the government to prove
13 beyond a reasonable doubt that the offenses were committed on a
14 date reasonably near the dates alleged in the Indictment, it is
15 not necessary for the government to prove that the offenses
16 were committed precisely on the dates charged.

17 "JURY INSTRUCTION NO. 11.

18 "You have heard testimony from persons who, because of
19 education or experience, were permitted to state opinions and
20 the reasons for their opinions.

21 "Such opinion testimony should be judged like any
22 other testimony. You may accept it or reject it and give it as
23 much weight as you think it deserves, considering the witness'
24 education and experience, the reasons given for the opinion,
25 and all the other evidence in the case.

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1 "JURY INSTRUCTION NO. 12.

2 "The punishment provided by law for this crime is for
3 the Court to decide. You may not consider punishment in
4 deciding whether the government has proved its case against the
5 defendant beyond a reasonable doubt.

6 "INSTRUCTION NO. 13.

7 "Some of you have taken notes during the trial.
8 Whether or not you took notes, you should rely on your own
9 memory of what was said. Notes are only to assist your memory.
10 You should not be overly influenced by your notes or by those
11 of your fellow jurors.

12 "JURY INSTRUCTION NO. 14.

13 "The defendant is charged in the Superseding
14 Indictment with the following charges:

15 "Count One.

16 "Sexual Exploitation of Children.

17 "Beginning on a date unknown, and continuing to on or
18 about July 10th, 2014, in the State and Federal District of
19 Nevada, Lonny Joseph Ditirro, Jr., defendant herein, did
20 employ, use, persuade, induce, entice, and coerce a minor,
21 R.B., to engage in any sexually explicit conduct for the
22 purpose of producing any visual depiction of such conduct, and
23 that -- and that visual depiction was produced and transmitted
24 using materials that have been mailed, shipped, and transported
25 in and affecting interstate and foreign commerce by any means,

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1 including by computer, all in violation of Title 18, United
2 States Code, Sections 2251(a) and (c) [sic].

3 "Count Two.

4 "Sexual Exploitation of Children.

5 Beginning on a date unknown, and continuing to on or
6 about March 3, 2015, in the State and Federal District of
7 Nevada, Lonny Joseph Ditirro, Jr., defendant herein, did
8 employ, use, persuade, induce, entice and coerce a minor, C.A.,
9 to engage in any sexually explicit conduct for the purpose of
10 producing any visual depiction of such conduct, and that visual
11 depiction was produced and transmitted using materials that
12 have been mailed, shaped, and transported in and affecting
13 interstate and foreign commerce by any means, including by
14 computer, all in violation of Title 18, United States Code,
15 Sections 2251(a) and (c) [sic].

16 "Count Three.

17 "Sexual Exploitation of Children.

18 "Beginning on a date unknown, and continuing to on or
19 about August 12th, 2015, in the State and Federal District of
20 Nevada, Lonny Joseph Ditirro, Jr., defendant herein, did
21 employ, use, persuade, induce, entice, and coerce a minor,
22 S.M., to engage in any sexually explicit conduct for the
23 purpose of producing any visual depiction of such conduct, and
24 that visual depiction was produced and transmitted using
25 materials that have been mailed, shipped, and transported in

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1 and affecting interstate and foreign commerce by any means,
2 including by computer, all in violation of Title 18, United
3 States Code, Sections 2251(a) and (c) -- (a) and (e)." I'm
4 sorry. (a) and (e).

5 I think I've been saying (c) rather than (e).

6 MS. ROOHANI: You have, Your Honor, but it is (e).

7 THE COURT: (e). It's (e) -- Subsection (e) for all
8 of the counts.

9 "Count Four.

10 "Sexual Exploitation of Children.

11 "Beginning on a date unknown, and continuing to on or
12 about August 14th, 2014, in the State and Federal District of
13 Nevada, Lonny Joseph Ditirro, Jr., defendant herein, did
14 employ, use, persuade, induce, entice and coerce a minor, T.H.,
15 to engage in any sexually explicit conduct for the purpose of
16 producing any visual depiction of such conduct, and that visual
17 depiction was produced and transported using materials that
18 have been mailed, shipped, and transported in and affecting
19 interstate and foreign commerce by any means, including by
20 computer, all in violation of Title 18, United States Code,
21 Section 2251(a) and (e).

22 "Count Five.

23 "Possession of Child Pornography.

24 "Beginning on a date unknown and continuing to on or
25 about September 10th, 2015, in the State and Federal District

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1 of Nevada, Lonny Joseph Ditirro, Jr., defendant herein, did
2 knowingly possess any book, magazine, periodical, film,
3 videotape, computer disk and any other material that contained
4 an image of child pornography, as defined in Title 18, United
5 States Code, Section 2256(8), that has been mailed and shipped
6 and transported using any means and facility of interstate and
7 foreign commerce and in and affecting interstate and foreign
8 commerce by any means, including by computer, and that was
9 produced using materials that had been mailed, and shipped and
10 transported in and affecting interstate and foreign commerce by
11 any means, including by computer, all in violation of Title 18,
12 United States Code, Sections 2252A(a)(5)(B) and 2252A(b)(2).

13 "JURY INSTRUCTION NO. 15.

14 "You're here only to determine whether defendant is
15 guilty or not guilty in the charges in the Indictment. The
16 defendant is not on trial for any conduct or offense not
17 charged in the Indictment.

18 "JURY INSTRUCTION NO. 16.

19 "The defendant is charged in Count One of the
20 Superseding Indictment with sexual exploitation of a child in
21 violation of Sections 2251(a) of Title 18 of the United States
22 Code. In order for the defendant to be found guilty of that
23 charge, the government must prove each of the following
24 elements beyond a reasonable doubt:

25 "First, at the time, R.B. was under the age of

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1 18 years;

2 "Second, the defendant employed, used, persuaded,
3 induced, enticed, or coerced R.B. to take part in sexually
4 explicit conduct for the purpose of producing a visual
5 depiction of such conduct, and

6 "Third, the visual depiction of such sexually explicit
7 conduct was produced using materials that had been mailed,
8 shipped, or transported across state lines or into foreign
9 commerce.

10 "JURY INSTRUCTION NO. 17.

11 "The defendant is charged in Count Two of the
12 Superseding Indictment with sexual exploitation of a child in
13 violation of Sections 2251(a) of Title 18 of the United States
14 Code. In order for the defendant to be found guilty of that
15 charge, the government must prove each of the following
16 elements beyond a reasonable doubt:

17 "First, at the time, C.A. was under the age of 18;

18 "Second, the defendant employed, used, persuaded,
19 induced, or coerced C.A. to take part in sexually explicit
20 conduct for the purpose of producing a visual depiction of such
21 conduct; and

22 "Third, the visual depiction of such sexually explicit
23 conduct was produced using materials that had been mailed,
24 shipped, or transported across state lines or in foreign
25 commerce.

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1 "JURY INSTRUCTION NO. 18.

2 "The defendant is charged in Count Three of the
3 Superseding Indictment with sexual exploitation of a child in
4 violation of Sections 2251(a) of Title 18 of the United States
5 Code. In order for the defendant to be guilty of that charge,
6 the government must prove each of the following elements beyond
7 a reasonable doubt:

8 "First, at the time, S.M. was under the age of
9 18 years;

10 "Second, the defendant employed, used, persuaded,
11 induced, enticed, or coerced S.M. to take part in sexually
12 explicit conduct for the purpose of producing a visual
13 depiction of such conduct; and

14 "Third, the visual depiction of such sexually explicit
15 conduct was produced using materials that had been mailed,
16 shipped, or transported across state lines or in foreign
17 commerce.

18 "JURY INSTRUCTION NO. 19.

19 "The defendant is charged in Count Four of the
20 Superseding Indictment with sexual exploitation of a child in
21 violation of Sections 2251(a) of Title 18 of the United States
22 Code. In order for the defendant to be found guilty of that
23 charge, the government must prove each of the following
24 elements beyond a reasonable doubt:

25 "First, at the time, T.H. was under the age of

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1 18 years;

2 "Second, the defendant employed, used, persuaded,
3 induced, enticed or coerced T.H. to take part in sexually
4 explicit conduct for the purpose of producing a visual
5 depiction of such conduct; and

6 "Third, the visual depiction of such sexually explicit
7 conduct was produced using materials that had been mailed,
8 shipped, or transported across state lines or in foreign
9 commerce.

10 "JURY INSTRUCTION NO. 20.

11 "The defendant is charged in Count Five of the
12 Indictment with Possession of Child Pornography, in violation
13 of Title 18 of the United States Code, Section 2252A(a) (5) (B) .
14 In order for the defendant to be found guilty of that charge,
15 the government must prove each of the following elements beyond
16 a reasonable doubt:

17 "First, that the defendant knowingly possessed
18 material that the defendant knew contained visual depictions of
19 minors engaged in sexually explicit conduct;

20 "Second, the defendant knew the visual depiction
21 contained in the material showed a minor engaging in sexually
22 explicit conduct;

23 "Third, the defendant knew that production of such a
24 visual depiction involved the use -- involved use of a minor in
25 sexually explicit conduct; and

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1 "Fourth, the -- that the visual depiction had been
2 either.

3 "a) mailed, shipped, or transported in interstate
4 commerce -- interstate or foreign commerce by any means,
5 including by computer, or

6 "b) produced using material that had been mailed,
7 shipped, or transported, in interstate or foreign commerce, by
8 any means, including by computer.

9 "JURY INSTRUCTION NO. 21.

10 "An act is done knowingly if the defendant is aware of
11 the act and does not act through ignorance, mistake or
12 accident. The government is not required to prove that the
13 defendant knew that his acts or omissions were unlawful. You
14 may consider evidence of the defendant's words, acts, or
15 omissions, along with all the other evidence, in deciding
16 whether the defendant acted knowingly.

17 "JURY INSTRUCTION NO. 22.

18 "As to Counts One, Two, Three and Four, the government
19 need not show the defendant was aware R.B., C.A., S.M., and
20 T.H. were under the age of 18 at the time he used them in
21 creating visual depictions of sexually explicit conduct. The
22 government must prove beyond a reasonable doubt that at the
23 time of the visual depictions of sexually explicit conduct,
24 R.B., C.A., S.M., and T.H. were in fact under the age of 18.

25 "JURY INSTRUCTION NO. 23.

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1 "As it relates to Counts One, Two, Three and Four,
2 'interstate commerce' means commerce between different states,
3 territories, and possession of the United States, including the
4 District of Columbia.

5 "'Commerce' includes, among other things, travel,
6 trade, transportation, and communication.

7 "In determining whether the defendant's conduct was in
8 or affected interstate or foreign commerce, you may consider
9 whether the defendant used means or facilities of interstate
10 commerce, such as a telephone or the Internet, or whether his
11 conduct substantially affected interstate commerce by virtue of
12 the fact that he purchased or used items that had been moved in
13 interstate commerce.

14 "JURY INSTRUCTION NO. 24.

15 "As it relates to Count Five, the term 'facility' or
16 'means of interstate commerce' includes Internet communications
17 and telephone communications transmitted from one state or
18 foreign country, to another state.

19 "JURY INSTRUCTION NO. 25.

20 "The term 'producing' as it relates to all counts can
21 include recording, filming, photographing, directing, making,
22 creating, or manufacturing visual depictions.

23 "The act of 'producing' is not limited to the moment
24 of recording. 'Production' includes possessing, downloading,
25 copying, or transferring -- transferring the visual depictions

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1 in digital format.

2 "JURY INSTRUCTION NO. 26.

3 "'Child pornography' means any visual depiction,
4 including any photograph, film, video, picture or computer or
5 computer-generated image or picture, whether made or produced
6 by electronic, mechanical, or other means, of sexually explicit
7 conduct, where the production of such visual depiction involves
8 the use of a minor engaging in sexually explicit conduct.

9 "JURY INSTRUCTION NO. 27.

10 "'Minor' means any person under the age of 18 years.

11 "JURY INSTRUCTION NO. 28.

12 "'Sexually explicit conduct' means actual or
13 simulated:

14 "(a) sexual intercourse, including genital-genital,
15 anal-genital, or oral-anal contact, whether between persons of
16 the same or opposite sex;

17 "(b) bestiality;

18 "(c) masturbation;

19 "(d) sadistic or masochistic abuse; or

20 "(e) lascivious exhibition of the genitals or pubic
21 area of any person.

22 "JURY INSTRUCTION NO. 29.

23 "Regarding the last type of sexually explicit
24 conduct -- 'lascivious exhibition' -- not every exposure of the
25 genitals or pubic area constitutes lascivious exhibition. In

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1 determining whether a visual depiction constitutes lascivious
2 exhibition, you should consider the context and setting in
3 which the genitalia or pubic area is being displayed. You may
4 consider the overall content of the material. You may also
5 consider such factors as whether the focal point of the visual
6 depictions is on the minor's genitalia or pubic area or whether
7 there is some other focal point. You may consider whether the
8 setting of the depiction is such to make it appear to be
9 sexually inviting or suggestive; for example, in a location or
10 in a pose associated with sexual activity. In addition, you
11 may consider whether the minor appears to be displayed in an
12 unnatural pose or in inappropriate attire. You may also
13 consider whether the minor is partially clothed or nude. You
14 may consider whether the depiction appears to convey sexual
15 coyness or an apparent willingness to engage in sexual
16 activity, and whether the depiction appears to have been
17 designed to elicit a sexual response in the viewer. Of course,
18 a visual depiction not -- need not involve all of these factors
19 to be lascivious exhibition.

20 "JURY INSTRUCTION NO. 30.

21 "'Visual depiction' includes undeveloped film and
22 videotape, data stored on computer disk, or by electronic means
23 which is capable of conversion into a visual image, and data
24 which is capable of conversion into a visual image that has
25 been transmitted -- transmitted by any means, whether or not

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1 stored in a permanent format.

2 "JURY INSTRUCTION NO. 31.

3 "A verdict form has been prepared for you. After you
4 have reached unanimous agreement on a verdict, your foreperson
5 should complete the verdict form according to your
6 deliberations, sign and date it, and advise the bailiff that
7 you're ready to return to the courtroom.

8 "JURY INSTRUCTION NO. 32.

9 "If it becomes necessary during your deliberations to
10 communicate with me, you may send a note through the bailiff,
11 signed by any one or more of you. No member of the jury should
12 ever attempt to communicate with me except by a signed writing,
13 and I will respond to the jury concerning the case only in
14 writing or here in open court. If you send out a question, I
15 will consult with the lawyers before answering, which may take
16 some time. You may continue your deliberations while waiting
17 for the answer to any question. Remember that you are not to
18 tell anyone - including me - how the jury stands, numerically
19 or otherwise, on any question submitted to you, including the
20 question of guilt of the defendant, until after you have
21 reached a unanimous verdict or have been discharged."

22 We'll now go to the summations or closing statements.
23 The government goes first.

24 MR. BURTON: Thank you, Your Honor.

25 Ms. Saavedra, could you please go over to the HDMI?

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1 Thank you.

2 (Brief pause in proceedings.)

3 MR. BURTON: Mr. Smith, Ms. Roohani, ladies and
4 gentlemen of the jury, in the first half of 2014, the defendant
5 had sex with R [REDACTED] B [REDACTED] when he was in his thirties and
6 she was 15, on her back patio during the night, and he recorded
7 it.

8 In November 2014, the defendant, well into his
9 thirties, had sex with C [REDACTED] A [REDACTED] when she was 15, in her
10 bedroom after he carried her upstairs like a child, and he
11 recorded it.

12 In September of 2014, the defendant, well into his
13 thirties, had sex with S [REDACTED] M [REDACTED], in her bedroom at her
14 parents' house, and he recorded it.

15 And in June 2013, after 13-year-old T [REDACTED] H [REDACTED]
16 snuck him into her grandmother's house and into her bedroom,
17 the defendant had sex with her, and he recorded it.

18 Additionally, the defendant downloaded and possessed
19 child pornography, pornography of minors engaged in sexually
20 explicit conduct, both from A [REDACTED] P [REDACTED] who you heard from,
21 as well as photos and videos depicting children.

22 These are the simple facts of the case. And when I
23 say simple, I don't mean easy. There's nothing easy about
24 these facts. There's nothing easy about the testimony, the
25 evidence, the photos, and the videos that you have received.

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1 What I mean by simple is that they are straightforward. They
2 are uncontroverted. They are undeniable, and they prove the
3 defendant's guilt of the charges in this case.

4 You've just been instructed as to the fact that the
5 defendant is facing five charges. The first four are charges
6 of sexual exploitation of children, and there are a number of
7 instructions, it's Instructions 16 through 19, that tell you
8 the facts that must be proven beyond a reasonable doubt to find
9 the defendant guilty of those charges, and they are virtually
10 identical. The only difference between these counts is that
11 each count relates to a different girl. Count One relates to
12 R [REDACTED] B [REDACTED], R.B. Count Two relates to C [REDACTED] A [REDACTED],
13 C.A. Count Three relates to S [REDACTED] M [REDACTED], S.M., and
14 Count Four, relates to T [REDACTED] H [REDACTED], T.H. So we're going to
15 go through this step by step and demonstrate what the evidence
16 proves beyond a reasonable doubt and what you are to consider
17 and not consider when weighing the evidence in this case.

18 First, you have to find, and the evidence shows beyond
19 a reasonable doubt, that R [REDACTED], C [REDACTED], S [REDACTED], and T [REDACTED]
20 were under the age of 18.

21 Simple math based on the forensic evidence of when the
22 videos and photos depicting these girls, as well as their own
23 testimony, demonstrates beyond a reasonable doubt that they
24 were under the age of 18.

25 You've also been instructed that that's what you have

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1 to find. In other words, you have to find that these girls
2 were indeed, in fact, under the age of 18. You do not need to
3 find, you do not need to consider whether the defendant knew
4 that at the time he created and produced this child
5 pornography.

6 Now, notwithstanding, the evidence in this case shows
7 that he did indeed know exactly how old these girls were. He
8 knew that R [REDACTED] B [REDACTED] was 14 when he met her because
9 that's what he manually entered for her folder. He knew that
10 C [REDACTED] A [REDACTED] was 15. He knew that T [REDACTED] H [REDACTED] was 13. He
11 was well aware that these girls were underage. But these laws
12 are designed to protect children. It's not the children's
13 responsibility to make sure they tell the defendant how old
14 they are; it's the defendant's responsibility to make sure, and
15 that's why his knowledge doesn't matter. What matters is the
16 fact that they were under the age of 18.

17 It's also not before you concerning the age of consent
18 for sexual relationships. The number, the age that is of
19 interest in this case is 18. Because there's a difference --
20 and you've heard that through these girls' testimony -- there's
21 a difference between engaging in sexual relationships and
22 consenting to those sexual relationships and engaging and
23 consenting to those sexual relationships being recorded, being
24 photographed, being videotaped. So, it doesn't matter if these
25 girls were old enough if the age of consent for sexual

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1 relationships with the defendant was 16, or 17, or 18; what
2 matters is they were not old enough to be videotaped having sex
3 with the defendant.

4 Second, you must find and the evidence shows the
5 defendant employed, used, persuaded, induced, enticed, or
6 coerced R [REDACTED], C [REDACTED], S [REDACTED], and T [REDACTED] to take part in
7 sexually explicit conduct for the purpose of producing a visual
8 depiction of such conduct.

9 Important to note, it's "or." So there's alternative
10 means that you can find were used to produce the same end. And
11 the facts of this case illustrate that the defendant had
12 different methods. Sometimes he persuaded, he induced, he
13 enticed. He told these girls that he was their boyfriend. He
14 told these girls that they were his girlfriend. He told these
15 girls that he loved them, that he wanted to marry them, that he
16 wanted to be in a relationship with them, and these girls
17 believed him. And they believed that they were in a legitimate
18 relationship with an 18-year-old. Because the defendant told
19 them that. And the defendant went as far as to alter his birth
20 certificate to show that he was much younger than he was.
21 Because he knew full well that if he told these girls that he
22 was 31, 32, 33, they would not have responded to his MeetMe
23 message. They would not have Skyped with him. They would have
24 not met him in person. So he lied to them to induce them, to
25 persuade them, to entice them to engage in sexually explicit

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1 conduct.

2 Sometimes he simply used them. Sometimes he recorded
3 screenshots of Skype chats of S [REDACTED] M [REDACTED] that she didn't
4 know he was capturing. Sometimes he recorded having sex with
5 them, like S [REDACTED] M [REDACTED], having her turn away and face away
6 from him so she doesn't know that he's recording. Sometimes he
7 lied to them, like C [REDACTED] A [REDACTED] and said that he stopped video
8 recording when he didn't.

9 And sometimes he coerced them. Sometimes, like when
10 R [REDACTED] [REDACTED] says no, I don't want to do this, please stop,
11 inducing, persuading, enticing and even using isn't working, so
12 he coerced [REDACTED] to engage in sexually explicit conduct for
13 the purpose of creating that video.

14 Physical presence of the defendant is irrelevant. In
15 other words, it's not required for you to find that the
16 defendant was in the same room with these girls. You can find,
17 in fact, that there are -- there's evidence to show that the
18 defendant at some points in time was in Las Vegas when
19 S [REDACTED] M [REDACTED] was in Texas and they were Skype chatting and he
20 was asking her to send him nudes or take off her clothes and he
21 was capturing screenshots of her in various stages of undress.

22 And the victims' "consent" -- and I put that in quotes
23 because as I just said, the legal age of consent to be video
24 recorded or photographed or recorded in any way in sexual
25 activity is 18, but to the extent that any of these girls came

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1 up here and said, I was -- I was all for being videotaped,
2 doesn't matter. The evidence shows that these girls did not
3 want this. They closed -- they covered their face. They
4 closed their eyes. They tried to avoid being identified during
5 the videotape. This was the defendant's idea. This was the
6 defendant's decision.

7 In fact, their knowledge isn't even relevant. Just
8 like S [REDACTED] M [REDACTED]. You can use someone to create these
9 visual depictions. You can use someone to engage in sexually
10 explicit conduct even without their knowledge. That's not
11 required.

12 And you were told to find sexually explicit conduct,
13 it includes sexual intercourse, like the videos that you've
14 seen. It includes masturbation and it also includes lascivious
15 exhibition of the genital or pubic area of any person, the
16 naked selfies that we've been talking about that the girls sent
17 at the defendant's direction. The Skype chats that were
18 screenshot and saved of girls, specifically S [REDACTED] M [REDACTED],
19 undressed.

20 You're also told in Instruction 25 what it means to
21 produce. You're told production includes recording and
22 photographing. And, so, when the defendant is holding a camera
23 phone as he's having sex with these minor girls and recording
24 that, he's producing.

25 It also includes directing. So when the defendant is

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1 asking the girls to send him nude photographs of themselves
2 exposing their genitals, he's producing.

3 It includes creating and making. So when the
4 defendant is making these screenshots of Skype chats depicting
5 the girls nude and exposing their genitals, he's producing.

6 It also includes copying and transferring. So when
7 the defendant is moving files from one device to the SD card or
8 from the SD card to another device back to the SD card, as he's
9 copying and transferring those files that depict minors engaged
10 in sexually explicit conduct, he's producing child pornography.

11 And, so, the evidence shows that the second element is
12 proven beyond a reasonable doubt.

13 Finally, third, you must find the visual depiction of
14 such sexually explicit conduct was produced using materials
15 that the been mailed, shipped, or transported across straight
16 lines or in foreign commerce. This is what we call the
17 interstate commerce element, which is just a fancy legal term
18 that means we have to show that there was some movement of the
19 material that was used to produce child pornography across
20 state lines. That's it. And it can be even across foreign
21 lines. Must be in and affecting the movement of items across
22 state lines.

23 Well, the SD card itself tells you beyond a reasonable
24 doubt that the material, that SD card that was used to produce
25 child pornography, crossed state lines. Because it was made in

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1 China and it was shipped to the United States, and specifically
2 to Nevada.

3 Additionally, the evidence demonstrates that the phone
4 the defendant used and had this SD card in when he created,
5 when he produced, when he videotaped, when he screenshotted the
6 child pornography, also crossed state lines. The defendant
7 told Detective Miller during his recorded interview that he had
8 an SD card, that he had multiple SD cards, and he used them
9 with Samsung phones, S4, S6. And you heard from Mr. Finnegan,
10 all Samsung phones, including S4s and S6s are manufactured
11 overseas. They're manufactured in China, southeast Asia,
12 Korea, and then they're shipped over here. So you know beyond
13 a reasonable doubt, the evidence shows beyond a reasonable
14 doubt that the materials used to produce that child
15 pornography, that visual depiction of minors engaged in
16 sexually explicit conduct, has crossed state lines.

17 Now, how do we know, how does -- the evidence also
18 shows that it's the defendant who produced the child
19 pornography.

20 You heard from all four of these girls. And there's
21 no indication that these girls know each other. There's no
22 evidence that they've met. In fact, some of them are from
23 different cities and different states. S [REDACTED] lives in
24 Texas. T [REDACTED] lives in Arizona. R [REDACTED] and C [REDACTED] live here
25 in Las Vegas and Henderson, but they all tell a remarkably

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1 similar story. Almost identical. They met the defendant on
2 MeetMe. He reached out to them. They indicated on their
3 MeetMe that they were minors and the defendant claimed, on his
4 MeetMe profile, that he was 18. They started exchanging
5 messages. They quickly turned sexual at the defendant's
6 direction. They began either moving towards a different Kik or
7 Skype, a different application, and they began trading photos
8 as well as more sexual conversation and messages. The
9 defendant asks for nudes. The defendant sends nudes of himself
10 unsolicited. The girls comply with the defendant's request.
11 Eventually they meet in person. It's always at the girls'
12 house, house that they share with their parents, or their legal
13 guardians, their grandmother, and they engage in sexual -- in
14 sex with the defendant, and he records them. Sometimes they
15 know about it; sometimes they don't.

16 The other evidence in this case corroborates the
17 girls' testimony. In fact, the defendant, in what's mostly a
18 self-serving letter about R [REDACTED] B [REDACTED], acknowledges that
19 he knows her, acknowledges what he claims, that they had some
20 relationship, some relationship, that he "dated" her, and that
21 he knew that she was under the age of 18 when they dated.

22 And the SD card, a text that only two people could
23 possibly have, C [REDACTED] A [REDACTED] and the defendant, is a copy of
24 this text conversation between the two of them where C [REDACTED]
25 identifies herself and the defendant saved that. So you know,

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1 and it's corroborated, that C [REDACTED] indeed had this interaction
2 with the defendant.

3 S [REDACTED] M [REDACTED], Skype chats that only include two
4 people. Sometimes she's clothed; sometimes she's not.
5 Sometimes the defendant saves screenshots of her clothed;
6 sometimes he saves screenshots of her naked. And it's the
7 defendant in that bottom right corner.

8 Letters, handwritten by T [REDACTED] H [REDACTED] and
9 hand-delivered to the defendant. Letters that no one else
10 besides T [REDACTED] and the defendant could possibly know about,
11 saved by the defendant to document the relationship that he had
12 with her, to document the sex that he had with her.

13 You also heard from A [REDACTED] [REDACTED], and A [REDACTED] P [REDACTED]
14 also provides evidence to you that identifies the defendant as
15 the person who produced the child pornography that you've seen
16 and the child pornography that the four charged victims
17 testified about, R [REDACTED] C [REDACTED], S [REDACTED], and T [REDACTED].

18 A [REDACTED] told you and testified that the defendant at
19 some point showed her videos, and she described videos and gave
20 descriptions that are consistent with the videos that you've
21 seen of R [REDACTED] and C [REDACTED]. And she told you that the
22 defendant told her that he knew they were minors at the time he
23 had sex with him and recorded the videos that he showed her,
24 and that he told her even their names, C [REDACTED] and R [REDACTED].

25 Now, whatever you think about what A [REDACTED] said about

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1 her relationship with the defendant, with her father in the
2 room, a person that she didn't want to know about the
3 relationship she had with the defendant, she can't guess what's
4 on those videos. It's the defendant that showed her those
5 videos. And she can't guess that there's some girl in Texas
6 who is involved in this unless the defendant tells her that.
7 And she reaches out to him [sic] on his behalf, and we hear
8 from S [REDACTED] M [REDACTED] who doesn't know A [REDACTED] P [REDACTED] but got a
9 Facebook message from her telling her what the defendant told
10 A [REDACTED] to tell her, deny that you know me because there's an SD
11 card with a bunch of nudes on it, and it's mine.

12 Even if you were to just disregard, you could set
13 aside all of these girls' testimony, there would still be proof
14 beyond a reasonable doubt that it was the defendant who
15 produced the child pornography. Because the videos themselves
16 show it's the defendant. It's the defendant who smiles at the
17 camera at the end of the video of R [REDACTED] B [REDACTED]. It's the
18 defendant who's depicted performing oral sex on C [REDACTED] A [REDACTED].
19 It's the defendant at the bottom right of Skype chat screen
20 after Skype chat screen of S [REDACTED] M [REDACTED] as she undresses, and
21 it's the defendant who's depicted smiling as he's recording
22 himself and T [REDACTED] H [REDACTED] having sex.

23 And so the verdict form which you'll see charges
24 Count -- excuse me -- four counts relating to four different
25 victims. The defendant is guilty of sexually exploiting

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1 R [REDACTED] B [REDACTED], R.B., and the defendant is guilty of sexually
2 exploiting C [REDACTED] A [REDACTED], C.A., the defendant is guilty of
3 sexually exploiting S [REDACTED] M [REDACTED], S.M., and the defendant is
4 guilty of sexually exploiting T [REDACTED] H [REDACTED], T.H. The
5 straightforward simple facts demonstrate the defendant's guilt
6 as to those charges.

7 Let's talk about Count Five. This is Instruction 20.
8 This is Possession of Child Pornography, and I want to be very
9 clear here, Count Five relates to the hundreds of images and
10 videos that the defendant downloaded and the photos of
11 A [REDACTED] P [REDACTED] that the defendant possessed. Count Five does
12 not relate to R [REDACTED] B [REDACTED], C [REDACTED] A [REDACTED], S [REDACTED] M [REDACTED],
13 or T [REDACTED] H [REDACTED]. And, so, when we talk about Count Five,
14 there are four elements you can see or four facts that you must
15 find.

16 First, the defendant knowingly possessed material that
17 the defendant knew contained visual depictions of minors
18 engaged in sexually explicit conduct.

19 And you're instructed that "knowingly" means
20 intentionally, not as a result of accident or mistake.

21 So, you don't need to decide whether the defendant
22 knew it was illegal to possess images of A [REDACTED] P [REDACTED] or
23 images of children ranging from four to six years old. What we
24 need to show is that he knew that those images existed and that
25 he possessed them.

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1 You don't need to show or need to find or decide that
2 the defendant knew that those images traveled in interstate
3 commerce or that those images were produced with materials that
4 traveled in interstate commerce, and you don't need to decide
5 motive. You don't need to figure out why it was that the
6 defendant possessed, collected, catalogued, organized and
7 retained hundreds of images of child pornography.

8 The folders that are involved are "Kik" and "Kik3" and
9 "download," and those folders demonstrate that the defendant
10 knew that he possessed images that depicted children engaged in
11 sexually explicit conduct. Because those are folders
12 associated with downloads from the Internet and items that he
13 received from Kik. And there are images and items that are
14 right next to -- these are folders that are visited frequently
15 because these images are right next to images of
16 T [REDACTED] H [REDACTED], S [REDACTED] M [REDACTED], and images of the defendant.
17 These aren't hidden folders. These aren't folders that no one
18 would know existed. These are folders that were used, folders
19 that the defendant was aware of.

20 And another folder "real lolicon" that the defendant
21 saved dozens of images of child pornography. Lolicon, you were
22 told, being a term unique to child pornography. Lolicon being
23 a title that the defendant manually typed in. He knew exactly
24 what was in that folder. He knew that it contained child
25 pornography.

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1 And, additionally, the defendant knew, when he
2 captured screenshots like this (indicating), as well as
3 screenshots where A [REDACTED] is exposing her genitals, that she was
4 a child engaging in sexually explicit conduct. She told him
5 she was 15. He knew she was 15. Captured these images, and he
6 possessed them. He knew exactly what he was doing.

7 The second and third element go together in some
8 respects so we're going to talk about them together. The
9 defendant knew the visual depiction contained in the material
10 showed a minor engaging in sexually explicit conduct, and the
11 defendant knew the production of such a visual depiction
12 involved use of a minor in sexually explicit conduct.

13 He knew that this was child pornography. He knew that
14 this was produced using real children and that they were really
15 engaged in sexually explicit conduct.

16 Minor, again, is 18 years -- or -- excuse me -- under
17 the age of 18 years old, and visual depiction of sexually
18 explicit conduct has the same definition as you -- we just
19 talked about. Lascivious exhibition of genitals, masturbation,
20 actual or simulated sexual acts.

21 The evidence shows that the defendant knew because he
22 titled folder names to include the ages of the girls depicted
23 in the images and videos that were in those folders. You saw
24 the over hundred folders that the defendant had, including
25 dozens of folders that had ages 13, 14, 15, 16, 17. And the

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1 evidence shows that that was indicative of their age because
2 the images inside were consistent with that age, and because
3 the defendant had other folders titled "Kat-Russian-34," which
4 contained images of a female that appeared to be in her early
5 or mid-thirties.

6 He also titled "real lolicon" and "real women,"
7 folders that were right next to each other, to demonstrate the
8 defendant knows the difference. The evidence shows he knows
9 what a real woman is and he knows what "real lolicon" is, and
10 he likes to keep those things separate. He likes to keep it so
11 that it's very clear where he wants to look, what he wants to
12 look at.

13 And the pictures and videos themselves, you've seen
14 these pictures. You've seen them. You know what they depict,
15 and any reasonable person would know within 10 seconds what
16 they depict. They depict children. They don't depict adults,
17 and they depict children engaged in sexually explicit conduct.

18 And the testimony as well. The testimony of
19 A [REDACTED] P [REDACTED]. Never lied to the defendant about her age.
20 Consistently told him she was 15. When she had her 16th
21 birthday, she was 16. Under the age of 18.

22 Finally, the fourth element, you must find the visual
23 depiction had been either mailed, shipped, or transported in
24 interstate or foreign commerce by any means, including by
25 computer, or produced using material that had been mailed,

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1 shipped, or transported in interstate or foreign commerce.

2 So it's "or." One or the other. And again, this is
3 the interstate commerce. And in this case there's evidence as
4 to both. There's evidence that these images were mailed,
5 shipped or transported in interstate or foreign commerce, and
6 there's evidence that they were produced using material that
7 had been mailed, shipped or transported.

8 So the folders, "Kik" and "Kik3," and "download,"
9 indicative of Internet or Internet-based applications as well
10 as Skype chats, essentially phone calls or use of phone
11 communications that the defendant used to possess and the
12 images traveled over, especially A [REDACTED] P [REDACTED], the Skype
13 images traveled over phone communications.

14 Additionally, as we've just talked about, as it
15 concerns A [REDACTED] P [REDACTED], those images were produced using
16 materials that had traveled in interstate commerce. The SD
17 card made in China. The Samsung phone that this SD4 or --
18 excuse me -- this SD card fit into, made outside of the
19 United States.

20 Identity. This is the defendant's SD card. The
21 evidence overwhelming demonstrates that.

22 Identifying documents on the SD card. The defendant's
23 resume, the defendant's birth certificate, the defendant's
24 altered birth certificate. There's nothing to indicate
25 Rachael Saito has identifying documents, or any documents on

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1 this SD card. There's nothing to show Stephen Baltazar has
2 anything on this SD card. This is the defendant's SD card, and
3 it contains items unique and identifying to him.

4 It contains photos, clothed and unclothed, and they're
5 in folders "me" and "me restricted." He's telling you whose SD
6 card this is. And in that "me restricted," over a hundred
7 photographs of the defendant exposing his penis. Photos that
8 the defendant would then send to R [REDACTED], S [REDACTED], C [REDACTED], and
9 T [REDACTED].

10 And there's those videos that we just talked about,
11 videos that depict the defendant having sex with underage
12 girls. Videos that the defendant saved on this SD card because
13 it's his SD card. The SD card that he used to possess child
14 pornography.

15 So as to Count Five, the evidence shows the defendant
16 is guilty of the offense of Possession of Child Pornography.

17 These are the simple facts. The evidence is
18 overwhelming, and the only verdict that the evidence is
19 consistent with is the evidence [sic] we ask that you return, a
20 verdict as to guilty as to all counts.

21 Thank you.

22 THE COURT: Mr. Smith?

23 MR. SMITH: Thank you, Your Honor.

24 Ms. Roohani, Mr. Burton, Special Agent Flaherty,
25 ladies and gentlemen of the jury, I'm going to keep my remarks

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1 kind of brief in this case. What I want to remind you of,
2 first of all, is what I told you in my earlier remarks, in my
3 opening statement, is that the images that you were going to be
4 shown were very likely to elicit a visceral reaction, a gut
5 reaction from you, because that would certainly be normal.
6 However, with that being said, you have to try to detach
7 yourself from that and you have to take a look at this evidence
8 with a clinical eye. The reason being is that you are now --
9 you have a duty and an obligation, and it's really a sacred one
10 because you're now being asked to sit in judgment over another
11 human being (indicating), and as I've said in court many times
12 in the past, the power to judge is the power to destroy. So
13 the government -- that's the reason, that's the reason why, in
14 our system, the government has to be held to their burden of
15 proof, the burden of proof beyond a reasonable doubt.

16 Now, Mr. Burton has just given you a very effective
17 presentation. He's a hard act to follow, I'll say that, but
18 there are certain things about this -- about this case that I
19 find troubling. What I find troubling in the first instance is
20 the testimony of Rachael Ismail. Rachael Ismail sat on the
21 witness stand and lied to your faces. She said that she found
22 that SD card stuck to her leg in bed. Lonny had spent the
23 night. She said she was actually afraid of him, but he helped
24 her move, he spent the night in her house. And the reason that
25 we know that she was lying to you is the testimony of

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1 Mr. Finnegan from Samsung, who explained to you that to get
2 that SD card out of the phone, you had to take the -- take off
3 the back of the phone. It doesn't magically pop out by itself.

4 The reason I bring these things up, ladies and
5 gentlemen, is that it's going to be your job to evaluate the
6 credibility of the witnesses and to decide what weight to give
7 their testimony and that is going to be based on your common
8 sense and on your life experience.

9 The young officer, Police Officer Bianco, very nice
10 young man, who testified briefly. He didn't have a whole lot
11 to say. He was the one, I believe, who impounded the evidence.
12 Didn't put it in the envelope. I don't know who did that, I
13 don't recall, and described the process of putting it in the
14 trunk of his car in a manila envelope and assigning an event
15 number to it. But he didn't do any kind of investigation into
16 the person who was, at the time, in possession of this card
17 containing this material. That -- that guy was just ignored,
18 basically.

19 Bear with me folks. I don't have a script that I'm
20 reading to you. I just have to, from time to time, refer to my
21 notes because I -- if I don't, I'll forget things.

22 (Brief pause in proceedings.)

23 MR. SMITH: Concerning the numbers next to the names
24 of the files with the names of the girls, the numbers 13, 14,
25 15, 16, whatever, this is something that you're going to have

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1 to decide based on the weight and the credibility of the
2 testimony that you've heard because we don't have anything else
3 to corroborate it. We haven't seen -- you know, we haven't
4 seen a birth certificate. We haven't seen -- we haven't heard
5 testimony from any of the parents or anything like that; we
6 just have the statements of the girls saying, well, I was this
7 age at that time. And some of these girls were -- at the
8 tender age that they might have been were sending nude
9 photographs of themselves out on social media. I'm not trying
10 to portray them as villains in this play, but it is something
11 to think about, that you have to -- if you're going to find
12 Mr. Ditirro guilty of these charges, you have to take what they
13 said at face value.

14 Now, those numbers that are next to their names
15 might -- might be that, or it might be something else. We
16 don't really know. I mean, you would have to make an
17 assumption, but assumptions don't lead to proof beyond a
18 reasonable doubt.

19 (Brief pause in proceedings.)

20 MR. SMITH: R [REDACTED]'s testimony, R [REDACTED] B [REDACTED]'s
21 testimony, was kept mercifully brief and my questions of her, I
22 made it real quick because something has -- has. . . affected
23 this girl very deeply. It was obvious that she was very
24 distraught on the witness stand. What the reason for that is,
25 is unknown to me, but it was not appropriate to -- to try and,

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1 for lack of a better word, attack her or attack her
2 credibility. I mean, she was visibly upset. Significantly,
3 she didn't remember meeting Lonny Ditirro, which I thought
4 was -- I thought was rather odd under the circumstances of the
5 rest of her testimony.

6 T [REDACTED] H [REDACTED] testified that she came into contact
7 with Mr. Ditirro on this website called MeetMe and she said she
8 was 13 years old at the time. Agreed to -- agreed to have a
9 sexual and/or relational -- I'm sorry. Agreed to have a
10 relationship with him that was sexual in nature. Now, if she
11 was, in fact, 13 years old, she can't. She's incapable of
12 giving consent, but, again, that's for you to determine if her
13 age is what she said it was.

14 Significantly, she said she had sex with Lonny every
15 night for a month in her grandmother's house, and there were
16 certain -- there were certain things that were said by some of
17 the witnesses in this case that -- sorry. I have a tendency to
18 walk around and the court reporter will miss what I'm saying.
19 Usually, I'm pacing, if this were a state court case. I guess
20 the level of adult supervision here is irrelevant. Doesn't
21 mean anything one way or the other, but it did sort of raise my
22 eyebrows when I heard testimony like this, and also testimony
23 from S [REDACTED] M [REDACTED]. S [REDACTED], who claimed she was 15 at the
24 time, stayed in her bedroom with her mother and her stepfather
25 in the same house.

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1 When I was growing up, that wouldn't have happened in
2 a million years, for what it's worth. For what it's worth is
3 you have to gauge the -- you have to gauge the credibility of
4 the witnesses and their testimony. That's your job. That's
5 your responsibility.

6 And the last comment that I really have to make before
7 you go off to deliberate is that A [REDACTED] P [REDACTED] also lied to
8 you on the witness stand. Now, maybe she had her reasons.
9 Maybe she was embarrassed or maybe because her father was in
10 the courtroom, but she flat out, straight-up lied to your
11 faces. Because she said that they -- you know, they just had a
12 friendly relationship and that was about all there was to it
13 until I asked some questions of her and then I believe

14 Ms. Roohani asked some follow-up questions and she admitted
15 that she had been in a sexual relationship with Mr. Ditirro.

16 So that, ladies and gentlemen, is a brief -- very
17 brief -- recap of the testimony that you heard in this case.
18 Again, it is up to you to leave your emotions at the courthouse
19 door. This is -- this is emotional stuff, I know. Believe me,
20 I'm not -- not trying to pull the wool over your eyes, but you
21 really have to be very clinical about this. You have to
22 evaluate the credibility of all of the witnesses in this case
23 before you come to your ultimate conclusion.

24 And with that being said, I thank you very much for
25 your time and attention.

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1 THE COURT: Ms. Roohani.

2 MS. ROOHANI: Thank you, Your Honor.

3 And Denise, can I ask for your assistance with the
4 ELMO, please?

5 Ladies and gentlemen, I'm not as tech savvy as my
6 colleague here so I work with paper and ELMO machine, so I
7 apologize, I don't have a PowerPoint prepared, but I do have a
8 few things I'd like to say to you.

9 Mr. Smith, our esteemed colleague, has worked
10 diligently on this case. Mr. Burton and I have worked on this
11 case. And Mr. Smith told you about our burden of proof. It's
12 high. It's beyond a reasonable doubt. We recognize that it's
13 a high burden. It's our honor to meet that burden, and we have
14 met it in this case. It's high because it's supposed to be.
15 And Mr. Burton and I, in presenting the evidence over the
16 course of the last few days to you, have met that burden.

17 Let's talk about that. Let's talk about some of the
18 things that Mr. Smith talked to you about.

19 First, let's start with these girls. Mr. Smith
20 indicated to you that they couldn't consent to this. I want to
21 make a distinction. There's a difference between consenting to
22 sex and consenting to be recorded when having sex. There's no
23 indication here that these sexual acts occurred when the girls
24 were over the age of 18. In fact, all of the evidence that
25 you've heard, from every single witness, is that these sex acts

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1 occurred when they were under the age of 18, which means that
2 none of these girls could have consented to being recorded.

3 Why? Why is the law written that way? Because we
4 recognize that children are vulnerable, that children make
5 really dumb decisions. And, so, the law is written that way
6 because adults are supposed to protect children.

7 And let's be clear, those girls that testified before
8 you are children, or they were, when the defendant decided to
9 have sex with them, decided to lie to them about his age, and
10 used his lies about his love for them and his age and what he
11 was going do for them to induce them not only to have sex with
12 him, but to not fight off that recording.

13 Now, Mr. Smith talked about parents. You might be
14 wondering, "Where are the parents in this equation?" Let's
15 talk about the parents. S [REDACTED] M [REDACTED]' mom did her job. She
16 looked up Mr. Ditirro online, and what did he do? He falsified
17 a birth certificate and produced it to her. She did her job.
18 But his lies worked. That's the coercion; that's the
19 inducement; that's the enticement. That's how Mr. Burton and I
20 have proved this case because, quite frankly, ladies and
21 gentlemen, there's nothing that Mr. Burton and I did here; it's
22 everything that the defendant did. You heard these girls.

23 Now, Mr. Smith told you that R [REDACTED] B [REDACTED],
24 something had affected her. Absolutely right. The defendant
25 having sex with her when she asked him not to, and recording

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1 her when she was covering her face, that's what affected her.
2 She told you what affected her. She said she had been
3 traumatized by this, and that's why it was difficult for her to
4 testify.

5 Now, the other girls, they all told you they believed
6 the defendant was 18 years old. Every single one of them told
7 you that they would not have even spoken to him if they had
8 realized that he was double their age.

9 Mr. Smith tells you that the numbers that are next to
10 these girls' names, you can only assume -- that's just purely
11 an assumption -- as to that being an age.

12 I'd like to direct your attention to Jury Instruction
13 No. 8. I'm going to put it up on the screen for you.

14 Mr. Smith told you there's no evidence to suggest that
15 it's anything other than a number. You saw some of the photos
16 that were inside of these folders. You saw -- you can use your
17 common sense, your reasoning, your common experience and
18 engaging with people in the world, and you actually have the
19 evidence. You can go into that thumb drive, you can open up
20 those folders, you can look at the girls that are inside of
21 each of those folders, and you can decide, is that an age, or
22 is that just a random number that the defendant assigned to
23 each girl. And if so, why did 14 happen to be the exact age
24 R [REDACTED] B [REDACTED] was when he met her? Why was 13 the exact age
25 that T [REDACTED] H [REDACTED] was when he met her and had sex with her?

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1 Why was 15 the exact age that C [REDACTED] A [REDACTED] was when he had sex
2 with her? Is it a pure coincidence? Or did the defendant know
3 exactly how old these girls were and he was cataloguing his
4 behavior with these girls and keeping it as a record of his
5 activities?

6 Now, I want to talk a little bit about Rachael Ismail
7 and Officer Bianco and really Officer Wilson and kind of the
8 insinuation that's been made here throughout the trial, and it
9 reminds me of the end of the Wizard of Oz, so bear with me for
10 just a moment. You remember at the end of the movie, Dorothy
11 and her friends, they get to the Emerald City, they go to see
12 the Wizard and they show up and they see the hologram of the
13 face of the Wizard and the fire and the smoke and the lights
14 and the noise and then, unsuspecting Toto goes and pulls that
15 curtain back. And what's behind that curtain? Just a man with
16 a bunch of lights and action. And what does he say? "Pay no
17 attention to the man behind the curtain."

18 That's what Mr. Ditirro's asking you to do. Pay no
19 attention to the man behind the camera recording the sex acts
20 with these girls. Pay attention to the fact that
21 Rachael Ismail is a flighty witness. Pay attention to the fact
22 that Officer Bianco testified that he did, in fact, impound
23 this card the exact way that Metro had trained him to do, and
24 pay attention -- don't pay attention to all of the evidence
25 that came out once the forensic examination had been done.

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1 Now, Rachael Ismail. She was special, wasn't she?
2 Ms. Ismail could not understand what the word "physically"
3 meant, and Mr. Burton had to ask her six times when the last
4 time was that Mr. Dittirro was physically in her apartment.

5 Do you remember that?

6 She couldn't provide a single straightforward answer
7 to any question that Mr. Burton asked, or that Mr. Smith asked.
8 She gave you a stream of consciousness response about the
9 philosophical meaning of love as opposed to answering a simple
10 straightforward question.

11 Now, ladies and gentlemen, that woman that you saw
12 testify, ask yourself, could she concentrate on a task long
13 enough to -- and Forensic Examiner Trafford told you, it would
14 have been a full-time job would to be able to do this -- to
15 collect all of the images of these girls, to create the folders
16 with the different names and the numbers that are associated
17 with it, to have ESP to figure out real dates that corresponded
18 with real human beings that the defendant met with them, change
19 the file names to correspond with that, and then repeatedly
20 change the date and time on her computer to somehow "plant"
21 evidence on the defendant. Is that reasonable? You get to
22 decide that.

23 And even, ladies and gentlemen, even if she could do
24 those things, where did she get videos of the defendant having
25 sex with girls who were half his age? Where would she have

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1 gotten those videos from?

2 The defendant told you that he used his phone. He
3 told you that he used the SD cards. The girls told you that he
4 recorded them using that phone. He was the person in
5 possession of those videos. Where would she have gotten that
6 from?

7 And even if Ms. Ismail had found that SD card in the
8 middle of the wilderness, would it have changed a single thing
9 about what was on it? And the answer to that is no, it really
10 wouldn't.

11 The fact of the matter is, is that the evidence is
12 undeniable, and you have access to all of it. You can look at
13 it if you want to. You can rely on the testimony of the
14 witnesses, if you want to. But in the end, when you give
15 thoughtful consideration to this evidence, there's really only
16 one verdict that that evidence supports, and that's a verdict
17 of guilt.

18 Thank you.

19 THE COURT: Court Security Officer will come forward
20 and take the oath.

21 COURTROOM ADMINISTRATOR: "You do solemnly swear to
22 keep this jury together in some private and convenient place,
23 that you will not permit any person to speak or communicate
24 with them nor do so yourself unless by order of the Court or to
25 ask them whether they have agreed upon a verdict and that you

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1 will return them into court when they have agreed upon a
2 verdict and that you will return them into court when they have
3 so agreed or when ordered by the Court, so help you God?"

4 COURT SECURITY OFFICER: I do.

5 THE COURT: Thank you.

6 Members of the jury, the case is now submitted to you
7 for deliberation and verdict.

8 With respect to the -- positions 13 and 14, you will
9 be held in reserve pending notification from the clerk whether
10 you are needed or not needed. You'll not participate in
11 deliberations at this time. However, you will -- as indicated,
12 you will be held in reserve in case you are needed, and that
13 would happen only if one of the 12 are disqualified for some
14 reason.

15 So, what I would like you to do is to -- before
16 deliberations commence, is to go into the jury room and
17 retrieve whatever personal effects you have in there and I will
18 meet you in the hallway outside of the jury room to provide you
19 with your juror attendance certificates and also to instruct
20 you on the contact information that will allow the clerk to
21 immediately contact you in case you are needed. If it happens
22 that you are needed, you will be assigned in the order of your
23 seating now, and the -- the jury will commence deliberations
24 from the very beginning if you are called in.

25 So, go ahead and go to the jury room and I -- as I

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1 indicated, I will meet Ms. Spangler and Mr. Hutchings just
2 outside in just a moment.

3 (Jury retired to deliberate at 11:04 a.m.)

4 THE COURT: All right. Counsel, if you will make sure
5 that Denise has phone numbers where you can be contacted
6 immediately in case there are any questions that come out of
7 the jury room I'll be able to consult with you.

8 Anything further?

9 MS. ROOHANI: No. Thank you, Your Honor.

10 MR. SMITH: No, Your Honor. Thank you.

11 THE COURT: Are you okay with me discussing with these
12 two alternates their responsibility to -- to continue under the
13 admonition?

14 MS. ROOHANI: Yes, Your Honor.

15 MR. SMITH: Yes. I'm fine with it, Judge.

16 THE COURT: Okay. Thank you.

17 All right. We're in recess.

18 (Recess was taken at 11:05 a.m.)

19 (Outside the presence of the jury at 11:59 a.m.):

20 COURTROOM ADMINISTRATOR: All rise.

21 THE COURT: The Court is informed that the jury has
22 reached verdicts.

23 Anything before we bring in the jury?

24 MS. ROOHANI: No, Your Honor.

25 MR. SMITH: No thank you, Your Honor.

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1 THE COURT: All right.

2 (Brief pause in proceedings.)

3 (Jury returned to courtroom with verdict at 12:00 p.m.:)

4 THE COURT: Please be seated.

5 Will the foreperson of the jury please rise.

6 JUROR NO. 4: (Indicating).

7 THE COURT: Has the jury reached a verdict on all
8 counts?

9 JUROR NO. 4: Yes.

10 THE COURT: Have you filled in your verdict on each of
11 the counts and signed and dated the form?

12 JUROR NO. 4: Yes.

13 THE COURT: Would you please hand that to the Court
14 security officer?

15 JUROR NO. 4: (Juror complies).

16 THE COURT: Thank you.

17 The clerk will read the verdict.

18 COURTROOM ADMINISTRATOR: "United States of America
19 vs. Lonny Joseph Ditirro, Jr., 2:16-cr-216-KJD-VCF.

20 "Verdict Form.

21 "We, the jury, in the above-entitled case upon our
22 oath do say:

23 "Number 1. That we find the defendant Lonny Joseph
24 Ditirro, Jr., guilty of the offense of sexual exploitation of
25 children, R.B., charged in Count One of the Indictment;

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1 "Number 2. That we find the defendant Lonny Joseph
2 Ditirro, Jr., guilty of the offense of sexual exploitation of
3 children, C.A., charged in Count Two of the Indictment;

4 "Number 3. That we find the defendant Lonny Joseph
5 Ditirro, Jr., guilty of the offense of sexual exploitation of
6 children, S.M., charged in Count Three of the Indictment;

7 "Number 4. That we find the defendant Lonny Joseph
8 Ditirro, Jr., guilty of the offense -- offense of sexual
9 exploitation of children, T.H., charged in Count Four of the
10 Indictment;

11 "Number 5. That we find the defendant Lonny Joseph
12 Ditirro, Jr. guilty of the offense of Possession of Child
13 Pornography charged in Count Five of the Indictment," dated
14 this 17th day of October, 2018, signed by the foreperson --
15 foreperson.

16 THE COURT: Thank you, Ms. Clerk.

17 Does either side wish to have the jury polled?

18 MS. ROOHANI: Not from the government, Your Honor.

19 MR. SMITH: No, Your Honor. Thank you.

20 THE COURT: All right. Thank you.

21 Members of the jury, you have now completed your
22 service as jurors. I want to thank you for your time and also
23 for the attention that you've shown throughout the presentation
24 of evidence. You're now discharged.

25 I will meet you in the jury room momentarily to hand

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1 you your certificate of juror's attendance and, again, thank
2 you for your service. You are discharged.

3 (Jury excused from courtroom at 12:03 p.m.)

4 THE COURT: Sentencing date, Ms. Clerk?

5 COURTROOM ADMINISTRATOR: Yes, Your Honor.

6 Wednesday, February 6th, 2019, at 9:00 a.m.

7 MR. SMITH: I'm sorry, Ms. Saavedra, that was the 5th;
8 right?

9 COURTROOM ADMINISTRATOR: The 6th.

10 MR. SMITH: The 6th.

11 COURTROOM ADMINISTRATOR: Yes.

12 MR. SMITH: I'm sorry. I think I'm getting hard of
13 hearing.

14 COURTROOM ADMINISTRATOR: No problem.

15 MR. SMITH: Thank you, Judge. That helped. Those
16 visual aids at my age are really helpful.

17 THE COURT: Okay. We are adjourned.

18 MR. SMITH: Thank you, Your Honor.

19 THE COURT: Thank you.

20 MS. ROOHANI: Thank you, Your Honor.

21 (Proceedings adjourned at 12:04 p.m.)

22 ///
23 ///
24 ///
25 ///

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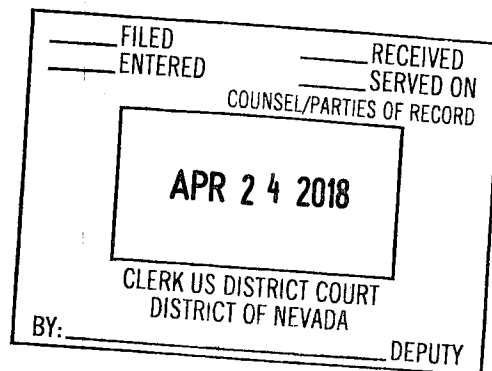
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COURT REPORTER'S CERTIFICATE

I, Heather K. Newman, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true, complete, and correct transcript of the proceedings had in connection with the above-entitled matter.

DATED: 2-27-2019

/s/ Heather K. Newman
Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER



DAYLE ELIESON
United States Attorney
District of Nevada
ELHAM ROOHANI
Assistant United States Attorney
Nevada Bar Number 12080
501 Las Vegas Boulevard South
Las Vegas, Nevada 89101
(702) 388-6336
Email: elham.roohani@usdoj.gov

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

-oOo-

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LONNY JOSEPH DITIRRO, JR.,

Defendant.

**SUPERSEDING
CRIMINAL INDICTMENT**

Case No: 2:16-cr-0216-KJD-VCF

VIOLATIONS:

COUNT I

Sexual Exploitation of Children, in violation
of 18 U.S.C. § 2251(a)

COUNT II

Sexual Exploitation of Children, in violation
of 18 U.S.C. § 2251(a)

COUNT III

Sexual Exploitation of Children, in violation
of 18 U.S.C. § 2251(a)

COUNT IV

Sexual Exploitation of Children, in violation
of 18 U.S.C. § 2251(a)

COUNT V

Possession of Child Pornography, in violation
of 18 U.S.C. § 2252A(a)(5)

FORFEITURE ALLEGATIONS

Criminal Forfeiture, 18 U.S.C. § 2253

SER 0093

1 **THE GRAND JURY CHARGES THAT:**

2
3 **COUNT ONE**

4 ***Sexual Exploitation of Children***

5 Beginning on a date unknown, and continuing to on or about July 10, 2014, in the State
6 and Federal District of Nevada,

7 **LONNY JOSEPH DITIRRO, JR.,**

8 defendant herein, did employ, use, persuade, induce, entice, and coerce a minor, "R.B.," to
9 engage in any sexually explicit conduct for the purpose of producing any visual depiction of such
10 conduct, and that visual depiction was produced and transmitted using materials that have been
11 mailed, shipped, and transported in and affecting interstate and foreign commerce by any means,
12 including by computer, all in violation of Title 18, United States Code, Sections 2251(a) and (e).

13 **COUNT TWO**

14 ***Sexual Exploitation of Children***

15 Beginning on a date unknown, and continuing to on or about March 3, 2015, in the State
16 and Federal District of Nevada,

17 **LONNY JOSEPH DITIRRO, JR.,**

18 defendant herein, did employ, use, persuade, induce, entice, and coerce a minor, "C.A.," to
19 engage in any sexually explicit conduct for the purpose of producing any visual depiction of such
20 conduct, and that visual depiction was produced and transmitted using materials that have been
21 mailed, shipped, and transported in and affecting interstate and foreign commerce by any means,
22 including by computer, all in violation of Title 18, United States Code, Sections 2251(a) and (e).

COUNT THREE

Sexual Exploitation of Children

Beginning on a date unknown, and continuing to on or about August 12, 2015, in the State and Federal District of Nevada,

LONNY JOSEPH DITIRRO, JR.,

defendant herein, did employ, use, persuade, induce, entice, and coerce a minor, "S.M.," to engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, and that visual depiction was produced and transmitted using materials that have been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, all in violation of Title 18, United States Code, Sections 2251(a) and (e).

COUNT FOUR

Sexual Exploitation of Children

Beginning on a date unknown, and continuing to on or about August 14, 2014, in the State and Federal District of Nevada,

LONNY JOSEPH DITIRRO, JR.,

defendant herein, did employ, use, persuade, induce, entice, and coerce a minor, "T.H.," to engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, and that visual depiction was produced and transmitted using materials that have been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, all in violation of Title 18, United States Code, Sections 2251(a) and (e).

COUNT FIVE

Possession of Child Pornography

Beginning on a date unknown, and continuing to on or about September 10, 2015, in the State and Federal District of Nevada,

LONNY JOSEPH DITIRRO, JR.,

defendant herein, did knowingly possess any book, magazine, periodical, film, videotape, computer disk, and any other material that contains an image of child pornography, as defined in Title 18, United States Code, Section 2256(8), that has been mailed, and shipped and transported using any means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce by any means, including by computer, and that was produced using materials that have been mailed, and shipped and transported in and affecting interstate and foreign commerce by any means, including by computer, all in violation of Title 18, United States Code, Sections 2252A(a)(5)(B) and 2252A(b)(2).

FORFEITURE ALLEGATION

Sexual Exploitation of Children and Possession of Child Pornography

1. The allegations contained in Counts One, Two, Three, Four, and Five of this Criminal Indictment are Hereby realleged and incorporated herein by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 2253(a)(1), 2253(a)(2), and 2253(a)(3).

2. Upon conviction of any of the felony offenses charged in Counts One, Two, Three, Four, and Five of this Criminal Indictment,

LONNY JOSEPH DITIRRO, JR.,

defendant herein, shall forfeit to the United States of America, any visual depiction described in Title 18, United States Code, Sections 2251 and 2252A, and any book, magazine, periodical, film, videotape, and other matter which contains any such visual depiction, which was produced,

transported, mailed, shipped and received in violation of Title 18, United States Code, Sections 2251(a) and 2252A(a)(5)(B):

defendant herein, shall forfeit to the United States of America, any property, real and personal, constituting and traceable to gross profits and other proceeds obtained from violations of Title 18, United States Code, Sections 2251(a) and 2252A(a)(5)(B):

defendant herein, shall forfeit to the United States of America, any property, real and personal, used and intended to be used to commit and to promote the commission of Title 18, United States Code, Sections 2251(a) and 2252A(a)(5)(B) and any property traceable to such property:

(1) SanDisk Micro Secure Digital Card (16GB) Ultra Plus.
(all of which constitutes property).

All pursuant to Title 18, United States Code, Sections 2251(a), 2251(e), 2252A(a)(5)(B), and 2252A(b)(2).

DATED: this 24th day of April, 2018.

A TRUE BILL:

/S/
FOREPERSON OF THE GRAND JURY

DAYLE ELIESON
United States Attorney


ELHAM ROOHANI
Assistant United States Attorney

BRIAN J. SMITH, ESQ.
State Bar Number 11279
9525 Hillwood Dr., Suite 190
Las Vegas, Nevada 89134
Tel. 702-380-8248
Fax. 702-868-5778
brian@bjsmithcriminaldefense.com
Attorney for DITIRRO

UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LONNY DITIRRO,

Defendant.

Case No.: 2:16-cr-00216-KJD-VCF

**SUPPLEMENT TO DEFENDANT'S
OBJECTIONS TO MAGISTRATE'S
REPORT AND RECOMMENDATION**

Defendant LONNY DITIRRO through his attorney BRIAN J. SMITH, ESQ., respectfully submits this Supplement to Defendant's Objection to Magistrate Judge Cam Ferenbach's Report and Recommendation. (See ECF No. 43). This supplement is made and based upon the attached memorandum of points and authorities and exhibits, the documents already on file, and the arguments at any hearing granted.

DATED this 30th day of October 2017.

/s/ Brian J. Smith

BRIAN J. SMITH
Law Office of Brian J. Smith, LTD.
Attorney for DITIRRO

Memorandum of Points and Authorities

I. Introduction

In the report and recommendation of Magistrate Judge Cam Ferenbach (ECF No. 43), it was determined that there was not an unreasonable delay in the obtaining of the search warrant in this case. In other words, the report and recommendation suggests that it did not violate the 4th Amendment's protection against unreasonable searches and seizures to hold the SD card owned by Ditirro for a period of three months.

In making this determination the Magistrate made several assumptions about the facts of the case, concluding, "Ditirro's possessory interests and the actual interference with those interests were minimal." (*See* ECF No. 43, at 11, line 17-18). The Magistrate suggests that Ditirro never sought the return of the property, that he could nevertheless use alternative SD cards, and that it is significant that Ditirro lost the card. *Id* at 11.

II. Argument

It is clear that after seizing an item, police must obtain a search warrant within a reasonable period of time. Segura v. U.S., 468 U.S. 796 (1984). "Officers who [delay in obtaining a warrant] will recognize that whatever evidence they discover as a ... result of the [delay] may be suppressed." *Id* at 812. The entire process must take "no longer than reasonably necessary for the police, acting with diligence, to obtain the warrant." Illinois v. McArthur, 531 U.S. 326, 332, 121 S. Ct. 946, 951, 148 L. Ed. 2d 838 (2001). The reasonableness of the length of a delay in obtaining a search warrant involves a weighing of "the nature and quality of the intrusion on the individual's 4th Amendment interests against the importance of the governmental interests alleged to justify the intrusion." United States v. Place, 462 U.S. 696, 703, 103 S. Ct. 2637, 2642, 77 L. Ed. 2d 110

(1983).

In the analysis of the individual interests of Dittirro in the SD card, the Court primarily notes that Dittirro lost the card. This is not an established fact. At the evidentiary hearing, it is revealed that Ismail may have been with Dittirro on the day she came into possession of the SD card. *See* Evidentiary Hearing, page 159. It is also revealed, both in the phone conversation with Detective Tooley and through the testimony of Torrez, that Ismail is worried about being cheated on and has investigated Dittirro's electronic media in attempt at discovering infidelity. *See e.g.*, Detective Tooley Rachel Ismail Recorded Interview, 11-30-15, 5:40-6:10; Evidentiary Hearing, page 159, line 5-7 (Torrez states that Ismail recovered the SD card while Dittirro was in the shower at her place).

It is not insignificant that the record contains several inconsistent statements from Ismail concerning when she last saw Dittirro and when and how she recovered the SD card. *C.f.* Evidentiary Hearing at 14, line 3-8; at 33, line 5-13, Evidentiary Hearing at 33, line 8-13, Detective Tooley Rachel Ismail Recorded Interview, 11-30-15, 16:00-16:30; 17:00-18:16. It is clear that as soon as she came into possession of the card, he reports repeatedly asking for it back from her. Detective Tooley Rachel Ismail Recorded Interview, 11-30-15, 18:25-19:01. This suggests he had strong suspicions that Ismail had his card and was keeping it from him. Further, it is likely that Ismail took the card from Dittirro's possessions in attempt to shed light on her preoccupation with Dittirro's possible affair.

The fact that Dittirro may have owned other SD cards should not factor towards the analysis of individual 4th Amendment interest. His interest involved a privacy and possessory interest in the contents of that particular card, something that cannot be considered to be coequal with another card containing separate data. Modern SD cards can hold an extremely large amount of personal

1 data. The subject card contained unique data that belonged to Ditirro and such data is central to his
2 possessory interest to be considered in the above mentioned 4th Amendment analysis.

3 As recognized by the Magistrate, Ismail and Torrez refused to tell Ditirro where the SD
4 card was. Thus, Ditirro would not have known nor could have known to request the card back
5 from law enforcement. As a result, that Ditirro “never sought return of the property” is a moot
6 point and not relevant to the above analysis. In fact, as explained by Ismail, Ditirro repeatedly
7 asked for the card back from her, but she ignored his requests. Ditirro made his possessory interest
8 clear. This possessory interest should not be considered “minimal” as no factor explained above
9 significantly diminishes the interest. This individual possessory interest can only be outweighed
10 then by an important, reasonable government interest that justifies the type of intrusion.

12 Turning to the side of government interest, the delay entailed a time period of three
13 months. The Magistrate’s report and recommendation suggests two months passed before
14 Detective Tooley applied for a search warrant. *See* ECF No. 43, at 12, line 7-8. Further delay
15 beyond the application itself is reportedly due to the “heavy caseload” of the department and the
16 need to “prioritize cases.” Nothing offered by the Government points to an exigency or need to
17 preserve the evidence while a diligent effort to obtain a warrant was active. *See e.g., Illinois v.*
18 *McArthur*, 531 U.S. 326, 337, 121 S.Ct. 946, 148 L.Ed.2d 838 (2001)(delay in obtaining search
19 warrant justified by exigency of possible evidence destruction, found to ‘limited and tailored
20 reasonably to secure law enforcement needs while protecting privacy interests.’).

23 In United States v. Song Ja Cha, 597 F.3d 995, 1005 (9th Cir. 2010), the Ninth Circuit
24 found that a seizure of a residence for at least 26.5 hours without a warrant was unreasonable. The
25 Court points to “systemic” errors committed by police, resulting in an extended delay without
26 justification. In Song Ja Cha, police had delayed completion of their reports, application for search
27 warrant, and the execution of the search warrant itself without a reasonable, justifiable purpose.
28

1 The government argued to the Court that despite the delay, officers were “extraordinarily diligent
2 and worked tirelessly around the clock.” United States v. Song Ja Cha, 597 F.3d 995, 1000 (9th
3 Cir. 2010). However, the Court found that nevertheless “they took a much longer time than was
4 reasonably necessary to obtain the warrant.” Id at 1001. Moreover, when a suspect is not in
5 custody yet his property is the subject of a seizure, possessory interests are much stronger instead
6 of “virtually nonexistent” for someone in custody. Id at 1002. The Court focuses on the fact that
7 Mr. Cha, the suspect in the case, was rendered homeless for the duration of the seizure, could not
8 contest the seizure, and was also not in custody at the time. Id. The Court did not find the officers
9 acted in bad faith, but rather that the delay was longer than necessary when juxtaposed to the
10 individual possessory interests involved. Bad faith is thus not a necessary element of a finding of
11 unreasonable delay in obtaining a search warrant. There were chances for moving things along
12 faster, such as officers “having all day Sunday to obtain the warrant before the late-night-hour of
13 10 p.m.,” but no reasonable explanation was given to justify the delay. Id at 1001.

16 In the present case, Ditiirro was not in custody and was not on notice of any investigation.
17 He had no ability to ask for the card back from law enforcement because that fact was hidden from
18 him. Effectively, the government was able to hold his property for a three-month period without
19 the normal protections afforded to such property interests. The Magistrate focuses on the fact that
20 private actors handed over the property to police, most notably that Ditiirro “lost” the card. As it is
21 not clear that the card was ever lost and may have been taken from Ditiirro’s property, it is also not
22 clear that his interests in the card were “minimal.” The Supreme Court has recognized that the
23 contents of cell phones, containing data in similar amounts and quality to an SD card, are a high
24 privacy item in which individuals have a particularly powerful possessory interest. Riley
25 v. California, 134 S. Ct. 2473, 2484-9, 189 L. Ed. 2d 430 (2014) (cell phone is like a minicomputer
26 capable of storing an immense amount of personal and sensitive information), *see also* United
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1 States v. Winn, 79 F.Supp.3d 904, 914 (S.D. Ill. 2015) (items like cell phones enjoy a high privacy
2 protections due to the amount of personal data on the storage of the phone, as in photos, emails,
3 letters, music, and other tools for managing and documenting a personal life).

4 It is not insignificant that “the purpose of the diligence requirement is to ensure that
5 property thought to contain contraband can be returned promptly to its owners to limit the
6 intrusion on their possessory interests, should contraband not be found.” United States v. Johnson,
7 806 F.3d 1323, 1349 (11th 2015). Furthermore, “when law enforcement is aware of or should be
8 aware of who the owners of seized property are, they must act diligently so the purpose underlying
9 the rule will be effectuated.” Id. In United States v. Winn, 79 F.Supp.3d 904, 915 (S.D. Ill. 2015),
10 the Court noted that a delay linked merely to departmental organization of officers or otherwise
11 failing to give officers adequate resources to process warrant applications cannot justify an
12 unreasonable delay in obtaining a search warrant. Speaking of a nine-day period of delay in
13 obtaining a search warrant, the Winn Court explains:
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16 Even if the Court accepted that Detective Lambert could not work on the case
17 during his off days or while he was the training, that still means it took him- a
18 detective with over ten-years’ experience- three full days to conduct his portion of
19 the investigation regarding a misdemeanor crime and prepare a two-page warrant
20 application, only half of which contained original content. This timeline is a strain
21 on the imagination.
22

23 United States v. Winn, 79 F.Supp.3d 904, 915 (S.D. Ill. 2015).

24 Issues involving failure or delay of delegation of tasks related to obtaining search warrants, failure
25 to staff, or to adequately give officers sufficient resources to process warrant applications could
26 lead to a delay that become constitutionally unreasonable. United States v. Burgard, 675 F.3d
27 1029, 1035 (7th Cir. 2012). In particular, a delay involving non-complex and mostly boilerplate
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1 type affidavit is less likely to be reasonable. *See e.g., Id* at 1034.

2 In the instant case, the following facts have been relied upon in assessing the handling of
3 the search warrant application: (1) Metro obtained the card September 10, 2015, (2) Nothing
4 happened until late November, when Detective Tooley was assigned to the case, (3) Detective
5 Tooley applied for a search warrant on December 2, 2015, (4) there was a “heavy caseload at any
6 given time and as a result they were forced to prioritize cases. (*See* ECF No. 43, page 12, line 5-
7 13).

8
9 Other than departmental staff and resource related issues, nothing exigent or imperative
10 took place that would justify a lengthy delay of three months. Detective Tooley has ample
11 experience, her career spans about thirteen years working on child pornography cases. *See*
12 Evidentiary Hearing, page 59, line 3-5. The SD card in question here was only a 16 gigabyte card,
13 a smaller size card which holds much less data than many other commonly-used cards. *See*
14 Evidentiary Hearing at page 60. Detective Tooley recognized that this type of volume could be
15 searched and examined quickly. *See* Evidentiary Hearing at page 61. Additionally, Detective
16 Tooley admits that the majority of the affidavit involves boilerplate copy and paste, with only one
17 section amounting to less than two pages of the seven page affidavit being individualized to
18 Ditiirro’s case. *See* Evidentiary Hearing at page 67-69.

19
20 One factor of major contention encompasses the “private actors” that handed the SD card
21 to the authorities. To be sure, it has been determined that the search committed by police after
22 speaking with Torrez and Ismail was more expansive than the private actor search. (*See* ECF No.
23 43, at page 6-8). By hinging the reasonableness of the delay on the fact that the card was first
24 brought to the attention of law enforcement by Torrez and Ismail, the Magistrate threatens to
25 supersede Ditiirro’s constitutional possessory interest under the 4th amendment on the bare
26 assumption that the limited role of private actors can circumvent a lengthy delay by government
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1 actors. This does not overcome the fact that the government held onto an SD card containing
2 personal data, knowing the identity of the owner of the card, a card that carried a strong
3 expectation of privacy outside of the argument involving private actor interference.

4 The conduct of private actors should not be considered irrelevant in defining the scope of
5 the Fourth Amendment. *See Dow Chemical Co. v. United States*, 476 U.S. 227, 232 (1986)
6 (conduct that would have been tortious or criminal if done by a private actor is but one factor to be
7 considered in determining whether that conduct violates a reasonable expectation of privacy);
8 *Kyllo v. United States*, 533 U.S. 27 (2001) (thermal imaging was held to be a search due to such
9 technology being beyond what could have been viewed by a private actor from the public); *Katz v.*
10 *United States*, 389 U.S. 347 (1967)(key factor in 4th Amendment protection is the level of
11 exposure to the public or a public actor). “The more that an individual exposes to private actors,
12 the more difficult it becomes to keep that same information from governmental actors.” *See Sam*
13 *Kamin*, *The Private is Public: The Relevance of Private Actors in Defining the Fourth*
14 *Amendment*, 46 B.C.L.Rev. 83, 117 (2004), <http://lawdigitalcommons.bc.edu/bclr/vol46/iss1/2>. In
15 *United States v. Johnson*, *supra*, the Court held that the fact that property to be searched was
16 turned over to law enforcement by a private actor is merely one of the factors in the balancing test
17 of individual 4th Amendment interest versus the interest of the government alleged to justify the
18 intrusion. *Johnson*, 806 F.3d 1323, 1339 (11th 2015). Moreover, seeking to retrieve the property
19 immediately after it being taken suggests a strong protected privacy interest in the item.

20 “I wanted to see what he was hiding from me,” said Ismail at the Evidentiary Hearing
21 about the SD card she viewed through her phone. *See* Evidentiary Hearing at page 14, line 19.
22 Ismail mentions that she knew Ditirro to be a private, secluded person, even blocking Ismail “out
23 of certain areas of his life”. *Id* at page 17-18. Although the Magistrate assumed the card to be lost
24 by Ditirro, this point is also contradictory to Ismail’s admission that Ditirro told her he was “really
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1 wanting that [SD card] back” from her. *See* Evidentiary Hearing at page 43, line 25. As Ismail has
2 always held out Ditirro to be a very private individual who would have wanted his data to remain
3 private, it is clear that Ditirro not only expected his data to remain private but also that he was
4 careful to shield his personal life from even someone he was dating. Even if, assuming for the sake
5 of argument Ditirro’s SD card was not purposely stolen or taken by Ismail, leaving an item with a
6 trusted friend has been considered differently than leaving the items exposed to the public sphere.
7 For example, locking a closed briefcase inside the locked trunk of a trusted friend does not indicate
8 that a defendant intended to leave it open for ‘public inspection and consumption,’ nor does it
9 indicate any diminution of an expectation of privacy in the item. Johnson, 806 F.3d 1323, 1345
10 (11th 2015), *citing* United States v. Infante-Ruiz, 13 F.3d 498 (1st Cir. 1994). Nevertheless, it is
11 apparent that beyond how Ismail obtained the card, Ditirro’s 4th Amendment interests in the
12 property were not minimal and should only be able to overcome by a reasonable, diligent, and
13 substantial government interest. No showing of the kind has taken place in this case. Instead, the
14 report and recommendation of the Magistrate largely relies on the determination of Ditirro’s
15 constitutional interests as minimal or diminished. As such, when the Ditirro’s interest is seen as
16 usual or even heightened as argued above, the delay of the government clearly becomes
17 unreasonable.
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20 **III. Conclusion**

21 The search and seizure process can be foiled when law enforcement instigates such a delay
22 in obtaining a warrant that it unreasonably frustrates constitutional protections of property and
23 privacy interests. In the present case, a three-month delay took place alleged to involve staffing,
24 resource and departmental issues. None of these minor and ordinary circumstances work to
25 overcome Ditirro’s interest in the SD card to be free from unreasonable seizure and delay. In
26 contrast to the finding of the report and recommendation (ECF No. 43), Ditirro’s interest was not
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1 diminished in anyway, as the data carried a high-expectation of privacy and was unique. Further, it
2 is not clear how Ismail came into possession of the card. Ditirro now respectfully requests that the
3 Court find the delay in obtaining the warrant unreasonable, and accordingly to suppress all fruits of
4 constitutionally-defective warrant process.

5 DATED this 30th of October, 2017.

6
7
8 /s/ Brian J. Smith

9 BRIAN J. SMITH
10 **Law Office of Brian J. Smith, LTD.**
11 Attorney for DITIRRO
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Certificate of Service

I hereby certify that, on October 30, 2017, I served the foregoing document upon the parties or counsel listed below:

STEVEN W. MYHRE
Acting United States Attorney
District of Nevada
ELHAM ROOHANI
501 Las Vegas Blvd. South
Suite 1100
Las Vegas, NV 89101
Via CM/ECF

Lonny Dittirro, #53326048
Nevada Southern Detention Center
2190 E. Mesquite
Pahrump, NV 89060
Via mail

/s/ Brian J. Smith
BRIAN J. SMITH
Law Office of Brian J. Smith, LTD.
Attorney for DITIRRO

BRIAN J. SMITH, ESQ.
State Bar Number 11279
9525 Hillwood Dr., Suite 190
Las Vegas, Nevada 89134
Tel. 702-380-8248
Fax. 702-868-5778
brian@bjsmithcriminaldefense.com
Attorney for DITIRRO

UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LONNY DITIRRO,

Defendant.

Case No.: 2:16-cr-00216-KJD-VCF

**OBJECTIONS TO
MAGISTRATE'S REPORT
AND RECOMMENDATION**

Defendant LONNY DITIRRO through his attorney BRIAN J. SMITH, ESQ., respectfully submits this Objection to Magistrate Judge Cam Ferenbach's Report and Recommendation. (See ECF No. 43). This objection is made and based upon the attached memorandum of points and authorities and exhibits, the documents already on file, and the arguments at any hearing granted.

DATED this 21st day of September, 2017.

/s/ Brian J. Smith
BRIAN J. SMITH
Law Office of Brian J. Smith, LTD.
Attorney for DITIRRO

Memorandum of Points and Authorities

I. Introduction

The Magistrate Judge, in issuing his report and recommendation, granted in part and denied in part DITTIRO's motion to suppress (ECF No. 32). However, the opinion of the Magistrate Judge nevertheless recommends that "any evidence initially obtained through private searches of the SD card be admitted." ECF No. 32 at 18. Further, "any evidence obtained from Dittiro's interrogation should be admitted." Id.

The first part of the opinion which deals with the existence of probable cause in Detective Tooley's request for a warrant is based largely on facts that, when examined from the totality of the circumstances found on record, are vague and inconsistent at best, and at worst carry a reckless disregard for the truth. Because the Magistrate Judge did grant that "the Metro Officers' testimony about what they viewed while searching the images contained in the SD card should not be admitted," the only remaining basis upon which to find probable cause would be the words of the private actors in the case, namely Stephen Torrez and Rachel Ismail. See ECF No. 32 at 9, line 11. Further, it is clear that the vague and inconsistent statements from these private actors, particularly those going to how the SD card was obtained, should bear upon the analysis concerning the unreasonable delay in obtaining and executing the search warrant in this case.

Finally, Dittiro made no voluntary waiver of his 5th and 6th amendment rights. His responses indicate a serious lack of comprehension towards the nature of his rights, and his mental caliber at the time was significantly reduced due to several factors including nicotine withdrawal, a shattered mental state, and coercive and overbearing law enforcement tactics. The statements Dittiro made to Special Agent Flaherty and Detective Miller were made under significant mental duress.

II. Argument

a. **The vague, inconsistent, and reckless statements by Torrez and Ismail do not suffice to create probable cause.**

An affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause for issuance of a search warrant. Illinois v. Gates, 462 U.S. 213, 239, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527 (1983). In analyzing a warrant for probable cause based upon the words of a witness or informant, veracity and basis of knowledge are to be examined in the totality of the circumstances. A “mere conclusory statement” gives the magistrate “virtually no basis at all for making a judgment regarding probable cause.” Id. The determination of probable-cause in the issuance of a search warrant cannot be a mere ratification of the bare conclusions of others. Id. Corroboration through other sources of information reduces the chances of a “reckless or prevaricating tale,” providing a credible and substantial basis for the hearsay. Id., *quoting Jones v. United States*, 362 U.S. 257, 269, 80 S. Ct. 725, 736, 4 L.Ed2d 697 (1960). Even if a search warrant application is supported by more than a “bare bones” affidavit, a reviewing court may properly conclude that the warrant was invalid because the magistrate’s probable-cause determination reflected an improper analysis of the totality of the circumstances. United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984). The appropriate remedy is suppression if the magistrate or judge was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth. Id. at 924; *See also* Franks v. Delaware, 438 U.S. 154, 98 S.Ct 2674, 57 L.Ed.2d 667 (1978).

Detective Tooley, the affiant of the search warrant application at issue, relied primarily on both the testimony of the officers who viewed the contents of the SD card and the testimony of Rachel Ismail. Although there is mention in the application of the involvement of Stephen Torrez handling and viewing of the files contained on the SD card, Torrez’ role is limited and is mostly portrayed as a middleman between Ismail and law enforcement viewing the files. As a result,

1 because the report and recommendation states that the officers inspecting the SD card may have
2 exceeded the scope of the private search, most of the determination of the probable cause will turn
3 on the testimony and credibility of Ismail.

4 The testimony of Torrez at the Evidentiary Hearing not only reveals his limited view of the
5 situation, but also the fact that his understanding of the events is contrary to the events as recalled
6 by the main witness, Rachel Ismail. First, Torrez mentions that Rachel came over crying and upset
7 the day she brought the SD card, specifically concerned that Dittiro may have been having an
8 affair. Evidentiary Hearing at 159, line 18-19. She claimed to have just been with Dittiro, and
9 while he was in the shower she recovered the SD card in question. Evidentiary Hearing at 159,
10 page 159, line 23-24. Torrez specifically states Rachel said nothing about “lying in bed and
11 [finding] the card stuck to her leg.” Evidentiary Hearing, page 159, line 5-7. Further, Torrez, who
12 is familiar and friendly with Dittiro, could not recognize Dittiro within the few pictures he viewed,
13 despite Ismail first claiming to have seen pictures involving Dittiro engaging with underage girls.
14 Evidentiary Hearing at 160, line 6-7. Torrez did not at any point describe the pictures that he did
15 view, nor how many pictures he viewed, only that he perceived the pictures to be “explicit.”
16 Evidentiary Hearing at 160, line 3-8.

17 It is clear that the words of Torrez, when considered alone, do not suffice to create probable
18 cause. Torrez fails to describe with any particularity the qualities or quantities of the pictures he
19 viewed. Additionally Torrez reveals that what Ismail told him was inconsistent with what she told
20 police. Importantly, Torrez makes clear that Ismail first brought the card to his attention while
21 highly agitated and upset with Dittiro. From this lens the veracity and consistency of the remaining
22 aspects of probable cause should be viewed, the testimony of Rachel Ismail.

23 The testimony of Ismail is not only vague but also inconsistent. First, at the evidentiary
24 hearing, Ismail directly contradicts what she told Torrez when she states that Dittiro was not
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1 around her when she found the SD card. Evidentiary Hearing at 14, line 3-8; at 33, line 5-13. On
2 direct examination she said at the time of finding the SD card, she had not seen Dittiro for at least
3 twenty-four hours. Evidentiary Hearing at 33, line 8-13. Also at the evidentiary hearing, Ismail
4 could only describe one photo that may have contained a sexual depiction of a child. See
5 Evidentiary Hearing at 21-23. She states that she did not view any more “restricted” files beyond
6 the one she describes. Evidentiary Hearing at 34, line 20; at 23, line 18-19. Ismail recounts that
7 when she brought the SD card to the attention of Torrez, she was trying to figure out what the
8 pictures were, and what they meant, and she was unsure about the necessity of police involvement.
9 Evidentiary Hearing at 34, line 10-22.

11 It is significant that Ismail says when she spoke with police for the first time about the
12 contents of the SD card, the officers had already viewed much of the contents of the card.
13 Evidentiary Hearing at 35, line 25. That is, before Ismail was able to complete a written voluntary
14 statement, officers told her they found data and pictures on the card that “showed more of a young
15 age.” Evidentiary Hearing at 36, line 23-24. Ismail tells officers that to her understanding, anything
16 concerning a young age would be in the “restrictive files.” Evidentiary Hearing at 37, line 1-5. She
17 Officers explained to Ismail that they had seen disturbing images, specifically making comment
18 about seeing what “looked like a 14-year-old.” Evidentiary Hearing at 37, line 16-17. Officers
19 Bianco and Wilson accordingly not only overstepped bounds as far as an unwarranted search, but
20 then also seeded the mind of Ismail with their description of what they believed to have seen on
21 the SD card.

24 Ismail does tell officers that she thought she recognized one of the girls in a picture located
25 outside of the “restrictive” folder. She explains that although she and Dittiro had broken up, she
26 learned that Dittiro was traveling to Texas to see his mother. See Search Warrant Application at
27 Bates 16. Ismail believed Dittiro may have seen a girl she recognized from his Facebook account.
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1 Id. However, Ismail was inferring this to be the case from the pictures she briefly viewed and had
2 no specific understanding of when or why Dittiro traveled to Texas. See Detective Tooley Rachel
3 Ismail Recorded Interview, 11-30-15, at 6:07-6:19. Ismail tells Detective Tooley that she began to
4 intuit a connection between Dittiro and other females when Dittiro decided to end the relationship
5 with Ismail. See Detective Tooley Rachel Ismail Recorded Interview, 11-30-15, 5:50-6:10.
6 Importantly, at the time of the search warrant application, Detective Tooley had not identified the
7 suspected minor in Texas. See Search Warrant Application at Bates 16. Ismail does not
8 specifically describe in detail to police in person, nor to Detective Tooley on the phone, any of the
9 pictures including who she believed to be S.M. (minor from Texas) contained explicit, sexual
10 pictures including who she believed to be S.M. (minor from Texas) contained explicit, sexual
11 scenes. The only picture she describes in any detail is single picture viewed within the “restricted”
12 folder. See Detective Tooley Rachel Ismail Recorded Interview, 11-30-15, at 11:00-12:00.

13 Importantly, her description of the single “restricted” picture she viewed was significantly
14 lacking in specificity. She describes a picture that does not include faces, mostly displaying a
15 distorted image of the bodies of what appeared to be a male and a female. Evidentiary Hearing at
16 21, line 15-17. At best, when pressured on the details of this picture, Ismail agreed the female body
17 appeared to be “underdeveloped,” but could not approximate an age. Evidentiary Hearing at 23,
18 line 3-11. Ismail says she can only see the “groin area” of the female, could not tell who or how
19 old the male was, nor could she tell how old the female was but assumed a young age due to the
20 “disproportionate” size of the body depicted. See Detective Tooley Rachel Ismail Recorded
21 Interview, 11-30-15, at 10:20-12:46.

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24 Detective Tooley was first interested in the voluntary statement of Ismail, but felt it was too
25 vague in reference to any specific age evaluation or sexual acts, and so she followed up by phone.
26 Evidentiary Hearing at 50, line 21-24. In the recording of the call between Detective Tooley and
27 Ismail played and entered at the Evidentiary Hearing, Tooley makes clear that in order to proceed
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1 with the case Ismail would have to describe more specific instances of criminal material she may
2 have viewed. See Detective Tooley Rachel Ismail Recorded Interview, 11-30-15, at 10:20-10.
3 Tooley asks, “How many images did you see of an adult male engaged in sex with children,” to
4 which Ismail responds, “wow that one just like that one just I don’t know-- that for sure is one.”
5 See Detective Tooley Rachel Ismail Recorded Interview, 11-30-15, at 10:55-11:08. Ismail does
6 mention seeing a couple images involving Dittiro himself, but could not say if the females
7 involved in those pics were children or other adults:

8
9 Rachel Ismail: Some of it looked like he downloaded pornography, and then a lot of
10 looked like he actually was doing his own pornography.

11 Detective Tooley: Ok, his own with children, or his own like with other adults?

12 Rachel Ismail: I don’t even know, honestly.

13 Detective Tooley Rachel Ismail Recorded Interview, 11-30-15, at 10:10-10:20.

14
15 Detective Tooley proceeded with the application for the search warrant on the evidence and
16 testimony emanating from the officers, Torrez, and Ismail. As the testimony of the officers has
17 been excluded, and the testimony of Torrez isn’t clear beyond bare assumptions and assertions, all
18 that remains upon which to support a finding of probable cause is the testimony of Rachel Ismail.

19 The 9th Circuit has said that probable cause shown through the statement of a victim or
20 witness must be based on a sufficient basis of knowledge. Peng v. Mei Chin Penghu, 335 F.3d 970,
21 978 (9th Cir. 2003), *citing* Fuller v. M.G. Jewelry, 950 F.2d 1437, 1444 (9th Cir.1991). This basis
22 of knowledge can be established if the victim provides “facts sufficiently detailed to cause a
23 reasonable person to believe a crime had been committed and the named suspect was the
24 perpetrator. Id. Inconsistencies in the witness testimony in Peng were not found to be dispositive
25 of probable cause because they were not only incidental to the substantive facts, but also the
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witness provided a sufficient and corroborated detailed statement to police. Peng, 335 F.3d at 979.

The Court found that nevertheless there were clear “material, historical facts not in dispute.”

There are four circumstances in which the good faith exception to the exclusionary rule does not apply because reliance on the search warrant is per se unreasonable:

(1) where an affiant misleads the issuing magistrate or judge by making a false statement or recklessly disregarding the truth in making a statement; (2) where the magistrate or judge wholly abandons her judicial role in approving the warrant, acting only as a “rubber stamp” to the warrant application rather than as a neutral and detached official; (3) where the warrant is facially deficient in detail as to the place to be searched or the things to be found that the officers could not reasonably presume it to be valid; or (4) where the affidavit upon which the warrant is based is so lacking in indicia of probable cause that no reasonable officer could rely upon it in good faith.

United States v. Crews, 502 F.3d 1130 (9th Cir. 2007).

Here, Detective Tooley knew or should have known that the veracity, quality, and quantity of the information provided by Ismail was lacking in probable cause. This is best indicated by Detective Tooley’s own comments at the Evidentiary Hearing, notably that she believed Ismail “wasn’t specific so” the Detective wanted “to get specific, if she could describe the sexual act or describe how old she believed the child to be.” Evidentiary Hearing at 50, line 22-24. However, when pressing Ismail on the specifics of what she saw, Detective Tooley was unable to get straight answers. Ismail could only describe in any detail one picture involving a male and female of unknown ages, suggesting that the picture was heavily distorted and taken from an angle that made it difficult to discern the characteristics of the people involved. Further, as described above, when asked specifically about if the pictures involving Dittiro himself included children or merely other

adults, Ismail responds with “I don’t even know, honestly.” Detective Tooley Rachel Ismail
Recorded Interview, 11-30-15, at 10:10-10:20.

Additionally, without the testimony of the officers, the application for the warrant becomes
so lacking in substantial indicia of probable cause, that no officer could reasonably rely upon it in
good faith. Torrez makes no clear statement, and instead relies on hearsay from Ismail. *See* Search
Warrant Application at Bates 16; *see also* Evidentiary Hearing at 78-79. Ismail’s testimony was
not only influenced by what Officers Bianco and Wilson told her they saw, but it was also wholly
lacking in any specific details from personal knowledge. Ismail also could not say with any
certainty that she knew of Dittiro’s trip to Texas, what it involved, or who he visited. Therefore,
Detective Tooley knew or should have known that Ismail’s testimony was insufficient, unreliable,
and inconsistent and could not be relied upon for probable cause. Further, Detective Tooley
included statements in her application for a search warrant that overstate and misstate what she
heard from Ismail, namely that she saw any explicit sexual pictures involving Dittiro and minors.
Ismail could only describe one picture with specificity, and the details concerning that picture are
minimal and unclear. She could not report with any certainty the ages or identities when pressed
by Detective Tooley for details.

The search warrant application failed to show probable cause, recklessly misled the
Magistrate, and therefore cannot be relied on in good faith.

b. Statements made by Dittiro under custodial interrogation should be suppressed.

The burden is on the government to demonstrate that the defendant knowingly and
intelligently waived his privilege against self-incrimination and his right to retained or appointed
counsel. Miranda v. Arizona, 384 U.S. 436, 475, 86 S. Ct. 1602, 1628, 16 L. Ed. 2d 694 (1966).
Dittro denies that his unintelligible response to the dispensation of Miranda around 2:00 in the

1 interview with Detective Miller and Special Agent Flaherty is a knowing recognition or waiver of
2 his rights.

3 When under subtle forms of psychological persuasion, the mental condition of a defendant
4 is a significant factor in the voluntariness calculus. *Colorado v. Connelly*, 479 U.S. 157, 164, 107
5 S. Ct. 515, 520, 93 L. Ed. 2d 473 (1986). Dittiro makes statements to interviewers that he “can’t
6 think straight” and specifically mentions he is going through nicotine withdrawal. Recorded
7 Interview with Dittiro, Detective Miller, and SA Flaherty, 06-17-16, at 3:24-28; 13:30-13:40 (“I
8 can’t even remember right now, I’m having such a bad nicotine fit.”); 52:09 (“Oh damn this
9 nicotine fit.”); 52:22 (“I hate when it’s hard to think like this”); 54:45 (“It’s kind of hard to make
10 decisions right now.”); 59:29 (“I feel like I’m even walking sideways”); 1:01:18 (mentioning that
11 his “brain” doesn’t seem “lucid”). These statements suggest that Dittiro was experiencing unusual
12 and significant mental disturbance.
13

14 It is indicative of his lack of understanding and comprehension of the situation that Dittiro
15 questions his rights in the final fifteen minutes of the recorded conversation. *Id.* at 49:00-1:03:51.
16 He expressly questions his need for an attorney, while mentioning that his attorney told him not to
17 give statements to police. *Id.* This revelation is telling of his lack of appreciation of the situation,
18 specifically that his vulnerable state of mind was not grasping the circumstances normally.
19 Notably, it is at this time that Special Agent Flaherty provides Dittiro with a clear statement
20 concerning his rights. *Id.* at 50:20-51:22. Dittiro then makes two requests for his attorney, only to
21 have Detective Miller continue to try to pressure him to make additional statements. *Id.* 51:00-
22 52:00. Dittiro continues to complain of mental impairment, then makes vulnerable and honest
23 statements concerning his understanding of the process, despite just having heard additional and
24 concise warnings concerning his 5th and 6th amendment rights. *Id.* at 52:00-52:45. Detective
25 Miller is forced to attempt to dispense warnings about Dittiro’s rights again. *Id.* In a span of
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1 seven minutes, Dittiro is given warnings at least eleven times from either Detective Miller or
2 Special Agent Flahtery. Id 49:40; 50:28; 51:12; 51:40; 52:49; 53:35; 54:30; and 55:00. After being
3 repeatedly told it was his decision whether or not he wanted to speak to police, Dittiro tells his
4 interviewers that “It’s kinda hard to make decisions right now.” Id at 54:55.

5 Under a totality of the circumstances, Dittiro’s lack of sophistication, his overt physical
6 discomfort and duress, and the interrogation tactics utilized in questioning him directly following
7 his federal arrest by a SWAT team, bring into serious doubt that Dittiro grasped the situation and
8 understood his rights and his ability to waive them. Additionally, Dittiro’s laughter within the
9 conversation is not properly understood as his intent to engage in a “light-hearted” conversation,
10 but instead is a sign of a retreated and distressed state of mind exhibited by unnatural and uneasy
11 laughter. Even after a sustained fifteen minutes of going over his rights and ability to remain
12 silent, and following another request to have his attorney contacted, Dittiro makes another
13 concession of his mental state, asking “Umm, so are we going to keep talking about it.. or... .” Id
14 at 1:02:20. It is clear Dittiro is unable to grasp the gravity of the situation, his ability to remain
15 silent, and his ability to speak through his attorney.

16 Dittiro made no voluntary waiver of his 5th and 6th amendment rights. Further, any
17 statements he made to Special Agent Flahtery and Detective Miller were made under significant
18 mental duress and thus not made voluntarily. Accordingly, under the totality of the circumstances,
19 Dittiro’s statements made to investigators on June 17, 2016 should be suppressed.

20 **c. Investigators used a two-step interrogation technique.**

21 Incriminating statements made and then repeated after deliberate mid-stream Miranda
22 warnings are inadmissible. Missouri v. Seibert, 542 U.S. 600, 621 (2004). If it can be determined
23 that interrogators deliberately employed a two-step Miranda interrogation strategy, a Court must
24 evaluate the effectiveness of the midstream Miranda warning. United States v. Williams, 435 F.3d
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1 1148, 1160 (9th Cir. 2006). The court must determine, based on objective evidence, whether the
2 midstream warning adequately and effectively apprised the suspect that he had a “genuine choice
3 whether to follow up on his earlier admission.” Id.

4 Here, Dittiro was awoken early in the morning of June 17, 2016 to at least fifteen members
5 of law enforcement, including highly armed SWAT members and agents of the Federal Bureau of
6 Investigation. Dittiro was “immediately placed into handcuffs, he and his two roommates.” See
7 Evidentiary Hearing at 114, line 12-13. He was placed into a vehicle and within fifteen minutes
8 was prepared for interrogation at the FBI office. Id. at 114, line 20. Dittiro was not told the
9 circumstances of the investigation until nearly an hour into his interrogation at the FBI office. Id. at
10 115, 10-11; Recorded Interview with Dittiro, Detective Miller, and SA Flaherty, 06-17-16, at
11 48:45.
12

13 The crux of the position of the government on this point surrounds the fact that the
14 unrecorded questions that Special Agent Flaherty and Detective Miller asked Dittiro prior to the
15 dispensing of Miranda warnings were not calculated to elicit an incriminating response from the
16 suspect. *See* ECF No. 32 at 11-12. Although Special Agent Flaherty suggests that the questions
17 were “biographical-type questioning,” she does admit to asking him about his living situation and
18 with whom he stays. Evidentiary Hearing at 116, line 1-5. Although the government qualifies this
19 questioning as routine and not incriminating within the context of a child pornography case,
20 because we do not have a record of the questions asked of Dittiro we cannot know exactly how the
21 questions were asked. In a case where a suspect is accused of inappropriate contact with minors,
22 questions surrounding his living situation and where or with whom he stays, could reasonably be
23 expected to elicit an incriminating response.
24

25 As suggested above, the midstream warning here did not effectively apprise Dittiro that he
26 had a genuine choice whether or not to follow up with the questioning he underwent prior to the
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1 Miranda warning. This is best displayed by Dittiro's total lack of understanding of the nature of
2 the eleven repeated warnings within the last fifteen minutes of the conversation with investigators.
3 It can be argued that the interrogation before and after Miranda warnings should be considered
4 continuous, in that the questions on both sides were likely to elicit an incriminating response. The
5 continuous subject then is not centered exclusively on the contents of the SD card, but rather
6 concerns Dittiro's personal contacts, living situation, and social habits. Although we cannot speak
7 to the details of the unrecorded conversation, the lack of clear curative measures until the latter
8 part of the interrogation at the FBI offices suggests Dittiro was unfairly questioned under the
9 pressures of custodial interrogation, and such pressure was made to be continuous throughout both
10 interrogations. This pressure goes to the heart of the concern in Seibert, namely that coercive
11 interrogative processes were utilized to bridge the conversations before and after Miranda
12 warnings, effectively invalidating the power and impact of Miranda protections.

13
14 **d. Unreasonable Delay in Execution of the Search Warrant**

15 The report and recommendation from the Magistrate Judge relies on a misreading of
16 factual circumstances in order to conclude that the five-month delay between police obtaining the
17 card and the execution of the warrant was reasonable. *See* ECF No. 43 at 13-14. First, it is not
18 clear that Dittiro lost the SD card in question. As explained above, Torrez reveals Ismail gave
19 inconsistent testimony concerning how she came about the SD card. In particular, Torrez reveals
20 that Ismail was highly upset over a possible affair Dittiro may have been having, and suggests that
21 she was with Dittiro when she obtained the card herself. Additionally, the Detective Tooley in the
22 Application for the Search Warrant frames Torrez exclusively as a middleman between Ismail and
23

24 Although it was through the action of private actors that police obtained the SD card, the
25 credibility and motive of Ismail can be brought into question. When taken together with the fact
26 that Ismail's extended testimony does not clearly reveal the extent of what she may have viewed
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1 on the SD card, along with the fact that we do not know how or when she came about the SD card,
2 it must be considered that the weight currently being given to the fact that a “private actor” turned
3 over the card to law enforcement is an overestimation and should be reassessed.

4 **III. CONCLUSION**

5 Once excised of the unconstitutional testimony excluded by the report and
6 recommendation, the search warrant involved in the case was significantly deficient of probable
7 cause. The statements of the primary witness within the search warrant application were clearly
8 inconsistent, vague, and tainted by the information gleaned from the officers who searched the
9 contents of the SD card without warrant. Police then delayed obtaining a search warrant for three
10 months, and further delayed execution of the warrant for an additional two months, amounting to
11 an unreasonable seizure under the Fourth Amendment. Detective Miller and Agent Flahtery
12 obtained statements from Dittiro in violation of his Fifth Amendment rights and Miranda. For each
13 of these reasons, the SD card, Dittiro’s statements, and the evidence derived from the statements
14 should be suppressed.
15
16

17 DATED this 21st of September, 2017.

18
19
20 /s/ Brian J. Smith
21 BRIAN J. SMITH
22 **Law Office of Brian J. Smith, LTD.**
23 Attorney for DITIRRO
24
25
26
27
28

Certificate of Service

I hereby certify that, on September 21, 2017, I served the foregoing document upon the parties or counsel listed below:

STEVEN W. MYHRE
Acting United States Attorney
District of Nevada
ELHAM ROOHANI
501 Las Vegas Blvd. South
Suite 1100
Las Vegas, NV 89101
Via CM/ECF

Lonny Dittiro, #53326048
Nevada Southern Detention Center
2190 E. Mesquite
Pahrump, NV 89060
Via mail

/s/ Brian J. Smith
BRIAN J. SMITH
Law Office of Brian J. Smith, LTD.
Attorney for DITIRRO

1 RENE L. VALLADARES
Federal Public Defender
2 Nevada State Bar No. 11479
RYAN NORWOOD
3 Assistant Federal Public Defender
411 E. Bonneville, Ste. 250
4 Las Vegas, Nevada 89101
(702) 388-6577/Phone
5 (702) 388-6261/Fax
Ryan_Norwood@fd.org
6

7 Attorney for Lonny Joseph Ditirro, Jr.

8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 LONNY JOSEPH DITIRRO, JR.,
15 Defendant.
16

Case No. 2:16-cr-216-KJD-VCF

MOTION TO SUPPRESS EVIDENCE

(Evidentiary Hearing Requested)

17 Certification: This Motion is timely filed.

18 The defendant Lonny Joseph Ditirro Jr., by and through his counsel of record, Ryan
19 Norwood, Assistant Federal Public Defender, moves this Court for an order suppressing the SD
20 card, statements, and derivative evidence in this case. A Memorandum of Points and
21 Authorities is attached.

22 DATED this 24th day of October, 2016.

23 RENE L. VALLADARES
24 Federal Public Defender

25 By: /s/ Ryan Norwood

26 RYAN NORWOOD
Assistant Federal Public Defender
Attorney for Lonny Joseph Ditirro, Jr.

SER 0124

MEMORANDUM OF POINTS OF AUTHORITIES

I. SUMMARY OF ARGUMENT

On September 10, 2015, Stephen Baltazar, an individual involved in law enforcement, contacted Las Vegas Metropolitan Police Department (“Metro”) regarding an SD card¹ belonging to the defendant Lonny Joseph Ditirro. Mr. Baltazar indicated he got the card from Rachael Saito, an ex-girlfriend of Mr. Ditirro, who claimed the card belonged to Mr. Ditirro and that it had child pornography on it. Without a warrant, Metro officers used Mr. Baltazar’s phone to examine the contents of the SD card. Believing the SD card contained child pornography, police seized the card that day.

Police delayed seeking a search warrant for nearly three months. On December 2, 2015, a Metro detective finally sought and obtained a warrant to search the SD card. To execute the warrant, the detective left a copy of the warrant in the case file. Police delayed actually examining the card for an additional two months. There is no explanation for the delays.

On June 17, 2016, a SWAT team of at least fifteen state and federal agents went to Mr. Ditirro’s home with an arrest and search warrant in the instant case. Mr. Ditirro was arrested and questioned three times for unspecified amounts of time. The agents exploited Mr. Ditirro’s lack of sophistication and physical duress to elicit involuntary statements. While at least three interrogations occurred, only one was recorded. The hour-long recording reveals the agents used a two-step interrogation technique with midstream *Miranda* warnings to elicit Mr. Ditirro’s statements.

Police violated Mr. Ditirro’s Fourth and Fifth Amendment rights in three ways. First, police unlawfully searched and seized the card without a warrant. Second, police caused an unreasonable three-month delay in obtaining a search warrant, which was an unconstitutional

¹ An SD (Secure Digital) card is “[a] family of very popular flash memory cards used for storage in portable devices.” PC Mag, Definition of: SD Card, <http://www.pcmag.com/encyclopedia/term/50962/sd-card> (last visited Oct. 20, 2016).

1 seizure. Third, police elicited Mr. Ditirro's involuntary statements in violation of his Fifth
2 Amendment rights and *Miranda*. All evidence obtained as a result of these constitutional
3 violations should be suppressed. An evidentiary hearing is requested.

4 **II. RELEVANT PROCEDURAL AND FACTUAL HISTORY²**

5 **A. Initial investigation**

6 On September 10, 2015, Metro Officers N. Bianco and G. Wilson responded to a "child
7 molestation call" at an address in Las Vegas, Nevada. Exhibit A, Police Report of N. Bianco,
8 Bates 10. The officers met with the reporting party, Stephen Baltazar, and his wife Tiffany
9 Gonyea. *Id.* According to Officer Bianco, the following occurred:

10 Baltazar stated that his friend Saito, Rachael found her ex-
11 boyfriend Ditirro, Joseph MicroSD card in her bed. When Saito
12 put the card into her phone, what appeared to be child
13 pornography was stored on the card, and initially didn't want to
speak to the police because she was scared that Ditirro would
retaliate so she gave the card to Baltazar.

14 Looking through the pictures using Baltazars cell phone, which
15 he voluntar[il]y let us use, were multiple pornographic images.
16 Multiple images in particular were naked females that appeared
17 to be less than 16 years old performing sexual acts. Saito arrived
18 to the apartment, and she stated that one of the females that
19 appeared to be below 16 goes by the name of 'S[.]', and
20 according to Ditirro's facebook graduates in 2017. Saito also
mentioned that Ditirro once drove down to Texas to meet up with
the female. Other images on the MicroSD card that Saito
mentioned were what she said appeared to be a 5 Y/O child
performing sexual acts on that of a adult male.

21 Looking through the MicroSD card, the only images viewed that
22 were in question was the pictures of 'S[.]' and the other females
23 that looked less tha[n] 16. Saito stated that the pictures of the
children less than 5 are in a specific folder on that card. . . . The

24
25 ² The following factual summary is taken from discovery provided by the government
26 to the defense to date and should not be interpreted as a concession or agreement to any facts.
Mr. Ditirro reserves the right to dispute or supplement the facts as necessary.

1 MicroSD was impounded connecting to this event number which
2 has the pornographic images on it.

3 Ex. A at 10-11. It is unclear whether Mr. Baltazar examined the contents of the card prior to
4 the police arrival. It is also unclear what images officers actually viewed using Mr. Baltazar's
5 phone. Finally, it is unclear if officers showed images to Ms. Saito upon her arrival. The report
6 indicates: "Saito arrived to the apartment, and she stated that one of the females that appeared
7 to be below 16 goes by the name of 'S[.]', and according to Ditirro's facebook graduates in
8 2017." *Id.* at 10. This statement leaves ambiguous whether Ms. Saito was describing something
9 she had previously seen on the card, whether she believed "S." was under 16, or whether she
10 made a statement in response to officers showing her images on the card.

11 On November 30, 2015, Metro Detective S. Tooley interviewed Ms. Saito. Exhibit C,
12 Search Warrant & Affidavit of Tooley, Bates 58; Exhibit D, Recorded Interview of Saito.³ On
13 that day, Ms. Saito made a number of inconsistent statements about what she had seen on the
14 card on September 9, 2015. For instance, Ms. Saito stated she saw downloaded pornography
15 and "his own pornography," though she did not know whether the images were of children or
16 adults. Ex. D at 10:14-10:28. At one point, Ms. Saito said she saw more than three images of
17 adults with children, but later claimed she saw one pictures of "juvenile stuff" and immediately
18 took the card out of her phone because she did not want the forensic data on her phone. *Id.* at
19 10:54-11:16, 11:51-12:14. Ms. Saito indicated that, not knowing what to do, she contacted a
20 friend who is involved in law enforcement. *Id.* at 1:45-1:52.

21 On December 2, 2015, Detective Tooley applied for and obtained a warrant to search
22 the SanDisk Micro Secure Digital Card stored in Metro's Evidence Vault for evidence of
23 possession of child pornography. Ex. C at 55, 57, 63. The probable cause affidavit underlying
24

25 ³ A copy of all audio exhibits are manually filed with the clerk's office, and courtesy
26 copies are provided to chambers and to the government.

1 the warrant is almost identical to the narrative of Officer Bianco's police report. *Compare* Ex.
2 C at 57-58 with Ex. A at 10-11. Accordingly, the warrant affidavit contains the same
3 ambiguities about the pre-warrant police search of the SD card noted above. *See supra* page 4.

4 On February 18, 2016, Metro Internet Crimes Against Children (ICAC) Examiner Matt
5 Trafford took the disk from the evidence vault and brought it to the ICAC Task Force office for
6 examination. Exhibit E, ICAC Examiner's Report of Matt Trafford, at Bates 95. On the disk,
7 Officer Trafford purportedly found 254 images and 42 videos he categorized as child abuse
8 material, 111 images and 22 videos categorized as child exploitation, and images of the suspect
9 Lonny Ditirro. *Id.* at 96. The images were divided into dozens of folders titled by name and
10 numbers, as well as folders titled "Me" and "Me Restricted" containing selfie-type images of
11 Mr. Ditirro. *Id.* at 97. Additionally, "the suspect's resume" was recovered on the card. *Id.*

12 **B. State court appearance**

13 On May 2, 2016, the state prosecutor filed a complaint charging Mr. Ditirro with
14 possessing child pornography under Nev. Rev. Stat. §§ 200.700, 200.730. Exhibit F, Criminal
15 Complaint in *State of Nevada v. Lonny Ditirro*, Case No. 16406660X; Exhibit G, Register of
16 Actions for Case No. 16406660X. The complaint was supported by the declaration of Metro
17 Detective Scott Miller. Ex. F at pp. 5-8. Mr. Ditirro made his initial appearance in state court,
18 alongside his counsel of record (retained attorney James C. Gallo), on May 27, 2016. Ex. G.
19 The state court judge released Mr. Ditirro on bond with conditions including house arrest. *Id.*

20 **C. Federal complaint and warrant**

21 On June 10, 2016, the government filed a complaint and arrest warrant in the instant
22 case charging Mr. Ditirro with possessing child pornography under 18 U.S.C. § 2252A(a)(5).
23 ECF No. 1. The probable cause affidavit underlying the complaint was written by the same
24 detective as in the state case (Detective Scott Miller) and contained the same factual allegations.
25 *Compare* ECF No. 1, pp. 2-4, with Ex. F, pp. 4-5. The government obtained a sealed arrest
26 warrant for Mr. Ditirro. ECF No. 8, *United States v. Ditirro*, 2:16-mj-431-NJK.

On June 16, 2016, the government sought and obtained a sealed search warrant for Mr. Ditirro's home under a separate case number, 2:16-mj-442-CWH. Exhibit H, Search and Seizure Warrant.⁴ The search warrant affidavit written by the same Detective Scott Miller indicated, based on the same facts addressed above, "evidence of a crime involving the sexual exploitation of a child may be found on the computers or other digital devices" located at Mr. Ditirro's residence. *Id.* at Bates 114.

D. FBI Interrogation

The next morning, at approximately 7:00 a.m. on June 17, 2016, an FBI SWAT team including at least fifteen state and federal law enforcement officers went to Mr. Ditirro's home. Exhibit I, Report of Detective Scott Miller, Bates 66-67; ECF No. 8, *United States v. Ditirro*, 2:16-mj-431-NJK. Mr. Ditirro was placed under arrest and taken to an FBI office for "processing." Ex. I at 67.

At the FBI office, Detective Miller and Agent Flaherty questioned Mr. Ditirro for an unspecified period of time. *Id.* At some point, Detective Miller turned on an audio recorder. Exhibit J, FBI Office Recording of Lonny Ditirro (June 17, 2016). Detective Miller stated:

Like I told you, I'm going to read you your rights, and make sure you understand those, okay? You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to consult with an attorney before questioning. You have the right to the presence of an attorney during questioning. If you cannot afford an attorney, one will be appointed to you before questioning. Do you understand these rights, Lonny?

Ex. J at 1:40-2:04. Mr. Ditirro responded, "Yeah." *Id.* at 2:01. Detective Miller resumed the questioning, "We were talking just a second ago. Who did you say that you live with?" Ex. J at 2:04-2:10. Mr. Ditirro explained he shares a studio apartment with two roommates and that

⁴ The search warrant was subsequently unsealed pursuant to an unopposed motion to unseal, ECF No. 21 (Aug. 23, 2016), though the case 2:16-mj-442-CWH remains sealed.

1 he sleeps on a mat. *Id.* at 2:15-3:18. Detective Miller also referenced an earlier round of
2 questioning at the apartment. *Id.* at 6:02-6:17 (“Tell me this, cause I was asking you at the
3 apartment, you have a suspended driver license to my knowledge, so how are you driving at
4 work? Do they not know or did you get that fixed?”).

5 Detective Miller proceeded to ask Mr. Ditirro questions about his employment,
6 education, and interests. When asked what his interests were, Mr. Ditirro responded, “I like
7 drawing, basketball . . .” *Id.* at 7:28-7:39. Detective Miller asked Mr. Ditirro whether he had
8 “computer experience” and whether he was good at math. *Id.* at 8:10-8:20. Mr. Ditirro
9 responded, “Some. I have my days and I don’t. Like, usually I can normally do math in my
10 head, but like, not all the time.” *Id.* at 8:20-8:36.

11 Detective Miller and Agent Flaherty also asked Mr. Ditirro for personal identifying
12 information, including his phone number, how long he had used his phone number, the
13 whereabouts of his previous phone, his email addresses and passwords (current and deleted),
14 Facebook username and password, Twitter username, Instagram account information, KIK user
15 account, Zoosk account, and MeetMe account. Ex. J at 10:54-22:10. Detective Miller asked
16 Mr. Ditirro for the name and details of his Internet service provider and phone provider. *Id.* at
17 22:15-26:48 (discussing Cricket Wireless and CenturyLink). Detective Miller further asked
18 Mr. Ditirro what he used his phone for and asked him about his online dating habits. *Id.* at
19 29:45.

20 Detective Miller asked Mr. Ditirro about the people he dated. Mr. Ditirro stated his ex-
21 girlfriend Rachel Saito, who had schizophrenia and manic depressive disorder, would yell at
22 him and tell him the government was after her. Ex. J at 29:59-32:30. Rachel had once tried to
23 poison him by putting something in his food, would punch him, and attempted to stab him. *Id.*
24 at 33:35-34:23, 35:37-35:50. She also did not let Mr. Ditirro go to work. *Id.* at 34:45. She
25 accused him of having sex with his two male roommates. *Id.* at 38:59-39:22.

1 Detective Miller asked Mr. Ditirro how he saved pictures and resumes. Ex. J at 41:45-
2 42:11 (“What about, on, like pictures, things like that, all that kinda stuff—how do you save
3 stuff to keep stuff—frickin’ resumes, anything like that?”). Mr. Ditirro stated he used to save
4 resumes and pictures on an SD card. *Id.* at 42:50. Agent Flaherty asked how many SD cards
5 Mr. Ditirro had and what phone he had used the SD cards on. *Id.* at 43:25, 43:58. Mr. Ditirro
6 stated he thought he had given Rachel an SD card because she did not have one; the SD card
7 had pictures of himself on it. *Id.* at 44:36-44:56.

8 Detective Miller also asked Mr. Ditirro whether he knew the difference between adult
9 and child pornography, and what an “adult” meant to him. Ex. J at 47:14-47:33. Mr. Ditirro
10 responded an adult was “the big people.” *Id.* at 47:33-47:35.

11 At various points in the recording, Mr. Ditirro indicated he felt lightheaded, had a
12 headache, and could not think properly. Ex. J at 3:26 (“It’s hard for me to think.”); *id.* at 14:17-
13 14:29 (“It feels like my, my head is like when you work out too much and your muscle doesn’t
14 want to work anymore. That’s kinda how my head feels right now.”); *id.* at 54:54 (“It’s kind
15 of hard to make decisions right now.”). In response, Detective Miller and Agent Flaherty
16 commented Mr. Ditirro probably just wanted a cigarette.

17 Detective Miller asked Mr. Ditirro whether he had ever downloaded child pornography.
18 *Id.* at 49:00. Mr. Ditirro asked, “Should I have my lawyer come?” *Id.* at 49:30. Detective
19 Miller said that was “up to you” and “we’re just here to talk.” *Id.* at 49:42. Mr. Ditirro stated
20 his lawyer, James Gallo, had told him not to make any statements. *Id.* at 49:49-50:22. Agent
21 Flaherty told Mr. Ditirro it was his option to talk or not. *Id.* at 50:33-50:56. Mr. Ditirro stated
22 his lawyer should probably be present. *Id.* at 50:50-51:03 (“I think I probably should have him
23 come, or whatever.”).

24 But the questioning did not stop. Detective Miller stated he was “confused” because
25 Mr. Ditirro had “been cool talkin’ with us and stuff.” Ex. J at 51:34-51:56. Mr. Ditirro said it
26 was hard to think and he did not know if it was better to have his attorney speak with the police.

1 *Id.* at 52:30-52:50. Detective Miller and Agent Flaherty told Mr. Ditirro they wanted to talk to
2 him about the federal child pornography case, which he was being charged with and for which
3 they had an arrest warrant. *Ex. J* at 53:43-54:11. Mr. Ditirro said it was hard to make decisions
4 right now. *Id.* at 54:54. Mr. Ditirro expressed his belief it would “sound bad” if he did not
5 want to answer questions. *Id.* at 55:35. He asked for a restroom break, which Detective Miller
6 permitted and accompanied him on. Agent Flaherty also left the room.

7 When Detective Miller and Mr. Ditirro returned to the interview room, Mr. Ditirro
8 stated, again, it would be a good thing for his attorney to be present. *Id.* at 1:01:29. Detective
9 Miller repeated that that was fine, but Mr. Ditirro could no longer ask them questions about his
10 case and to remember they were serving a federal search warrant at his residence and he had an
11 arrest warrant and would be appearing before a magistrate judge. *Id.* at 1:01:33-1:02:13. When
12 Agent Flaherty returned, Detective Miller acknowledged Mr. Ditirro had invoked his right to
13 have counsel present and turned off the recording. *Id.* at 1:02:10-1:03:53. However, Mr.
14 Ditirro’s counsel was apparently not contacted and Mr. Ditirro “spontaneously uttered”
15 statements about a girl he went to visit in New York. *Ex. I* at 67.

16 A few hours later, Mr. Ditirro made his initial appearance in federal court. ECF No 4.
17 Mr. Ditirro was appointed counsel and ordered detained pending trial that same day, on June
18 17, 2016. ECF Nos. 4, 6.

19 The government filed an indictment on July 19, 2016, charging Mr. Ditirro with one
20 count of sexual exploitation of children under 18 U.S.C. § 2251(a) and one count of possessing
21 child pornography under 18 U.S.C. § 2252A(a)(5). ECF No. 13.

22 **III. ARGUMENT**

23 Police officers violated Mr. Ditirro’s constitutional rights in three different ways. First,
24 Metro officers searched and seized the SD card without a warrant. Second, officers
25 unreasonably delayed pursuing a search warrant for the card for three months. Third, Detective
26 Miller and Agent Flaherty obtained Mr. Ditirro’s statements in violation of his Fifth

1 Amendment privilege against self-incrimination and *Miranda*. Suppression is warranted for
2 each of these violations.

3 **A. Police violated Mr. Ditirro's rights by searching his SD card without**
4 **a warrant on September 10, 2015.**

5 Metro officers conducted a presumptively unreasonable search by examining the SD
6 card's contents without a warrant. To the extent Mr. Baltazar viewed the SD card as a private
7 citizen, his (and Ms. Saito's) search of the card before Metro's does not extinguish the illegality
8 of the police search that followed. A hearing is necessary to determine the exact sequence of
9 events, but it appears Mr. Baltazar acted as a government agent and the police exceeded the
10 scope of any private search in violation of the Fourth Amendment. All evidence tainted by the
11 unlawful search should be suppressed, including the SD card and the later-obtained search
12 warrant, which was only obtained through tainted evidence.

13 **1. Officers conducted a presumptively unreasonable search by**
14 **examining the SD card's contents without a warrant.**

15 "Where a search is undertaken by law enforcement officials to discover evidence of
16 criminal wrongdoing, . . . reasonableness generally requires the obtaining of a judicial warrant."
17 *Riley v. California*, 134 S. Ct. 2473, 2482 (2014) (citation omitted). "Such a warrant ensures
18 that the inferences to support a search are drawn by a neutral and detached magistrate instead
19 of being judged by the officer engaged in the often competitive enterprise of ferreting out
20 crime." *Id.* (citation and internal quotation marks omitted). "In the absence of a warrant, a
21 search is reasonable only if it falls within a specific exception to the warrant requirement." *Id.*
22 Here, officers conducted an unlawful search under *Walter v. United States*, 447 U.S. 649, 654
23 (1980), and *United States v. Young*, 573 F.3d 711 (9th Cir. 2009).

24 An officer's authority to possess a package is distinct from his authority to examine its
25 contents. *Walter*, 447 U.S. at 654. In *Walter*, employees of a private carrier received a
26 misdirected shipment and called the FBI after they opened the boxes and found containers

1 suggestive of sexually explicit films. *Id.* at 651-52. Without a warrant, FBI agents extracted
2 the films from the containers and viewed them on a projector. *Id.* at 652. The Supreme Court
3 held suppression was warranted, as the FBI was not entitled to search the films without a
4 warrant. *Id.* at 658-60. “The fact that FBI agents were lawfully in possession of the boxes of
5 film did not give them authority to search their contents.” *Id.* at 654. “Nor d[id] the fact that
6 the packages and one or more of the boxes had been opened by a private party before they were
7 acquired by the FBI excuse the failure to obtain a search warrant.” *Id.* at 656. Even though
8 FBI agents had reason to believe the content of the films were illegal, “the unauthorized
9 exhibition of the films constituted an unreasonable invasion of their owner’s constitutionally
10 protected interest in privacy.” *Id.* at 654. “It was a search; there was no warrant; the owner had
11 not consented; and there were no exigent circumstances.” *Id.*

12 Even in circumstances where government agents may lawfully seize a package to
13 prevent loss or destruction of suspected contraband (exigencies not at play here), the Fourth
14 Amendment requires that they obtain a warrant before examining the package’s contents.
15 *Young*, 573 F.3d at 721. In *Young*, a private security guard discovered a gun in Young’s
16 backpack, which Young had left in his hotel room. *Id.* at 14. Security contacted the police and
17 took an officer to the room. *Id.* at 715. The guard then held open the backpack so that police
18 could see the weapon. *Id.* The Ninth Circuit affirmed the suppression of the gun, reasoning a
19 hotel “guest has a legitimate and significant privacy interest in the room’s contents, and does
20 not lose his expectation of privacy against unlawful government intrusions into his closed
21 briefcase or the contents of his computer hard drive when hotel staff sees the briefcase, laptop,
22 or other belongings while cleaning the room or changing a light bulb.” *Id.* at 721. “Closed
23 packages or containers, such as Young’s backpack, are in the general class of effects in which
24 the public at large has a legitimate expectation of privacy, making warrantless searches of them
25 presumptively unreasonable.” *Id.* (citation omitted). This presumption is particularly strong in
26 the electronic context, as digital storage devices “implicate privacy concerns far beyond those

1 implicated by the search of a cigarette pack, a wallet, or a purse.” *Riley*, 134 S. Ct. at 2488-89
2 (holding police may not conduct warrantless searches of digital information on a cell phone
3 seized from an arrestee).

4 Here, Mr. Ditirro had a legitimate expectation of privacy in the content of his SD card.
5 That right was not extinguished when he lost his card, just as the *Walter* sender retained an
6 expectation of privacy when the shipment was misdirected. As in *Walter*, officers here
7 suspected the SD card contained contraband. However, the fact they were in lawful possession
8 of the card (to the extent Mr. Baltazar gave the card to them) did not give them authority to
9 search it. See *Walter*, 447 U.S. at 654. Nor did Rachal Saito’s prior search excuse the failure
10 to obtain a search warrant. See *id.* at 656. As in *Walter*, “[i]t was a search; there was no warrant;
11 the owner had not consented; and there were no exigent circumstances.” *Id.* at 654. Like
12 packaged film reels and closed backpacks, the SD card supported a reasonable expectation of
13 privacy. Officers used Mr. Baltazar’s cell phone to examine the card’s contents without any
14 attempt to get a warrant. Ex. A at 10. This was unreasonable and violated Mr. Ditirro’s rights.

15 The government may attempt to circumvent the Fourth Amendment by arguing the
16 searches were first conducted by private citizens. However, that argument fails.

17 **2. Mr. Baltazar acted as a government agent if he searched while**
18 **police were present.**

19 The government’s discovery is unclear about the precise sequence of events leading to
20 the search of the SD card on September 10, 2015. According to Officer Bianco, Mr. Baltazar
21 and his wife called police to their home to report a crime. Ex. A at 10. “Looking through the
22 pictures using Baltazars cell phone, which he voluntar[il]y let us use, were multiple
23 pornographic images.” *Id.* The government may try to use this ambiguity to argue the officers
24
25
26

1 simply duplicated Mr. Baltazar's private search, which would not implicate the Fourth
2 Amendment. That argument fails under the facts of this case.⁵

3 Although searches conducted by private persons generally do not come within the scope
4 of the Fourth Amendment, "the [F]ourth [A]mendment does apply if the private person, 'in
5 light of all the circumstances of the case, must be regarded as an "instrument" or agent of the
6 state.'" *United States v. McGreevy*, 652 F.2d 849, 851 (9th Cir. 1981) (quoting *Coolidge v.*
7 *New Hampshire*, 403 U.S. 443, 447 (1971)). To determine whether a private individual is acting
8 as a government instrument, the relevant inquiry is: "(1) whether the government knew of and
9 acquiesced in the intrusive conduct; and (2) whether the party performing the search intended
10 to assist law enforcement efforts or further his own ends." *United States v. Reed*, 15 F.3d 928,
11 930-31 (9th Cir. 1994) (citations omitted). The defendant has the burden of showing
12 government action. *Id.* at 931. The two-part "government instrument" standard applies to off-
13 duty police officers as well as private citizens. *See McGreevy*, 652 F.2d at 851.

14 In *Reed*, the Ninth Circuit found a Fourth Amendment violation based on a hotel
15 manager's search of a guest's room where (1) officers "knew of and acquiesced" in the search
16 because they were personally present during the search, knew exactly what the manager was
17 doing as he was doing it, and made no attempt to discourage him from examining the guest's
18 personal belongings beyond what was required to protect hotel property; and (2) the manager
19 intended to help police gather proof the guest was using his room to deal narcotics.
20 Accordingly, information gathered in the search should have been suppressed. *Id.* at 933.

21 Here, if Mr. Baltazar searched the SD card once police arrived on September 10, 2015,
22 he acted as a government instrument. Both prongs of the two-part test would be met. First,
23

24 ⁵ As explained, the discovery is unclear as to whether Mr. Baltazar searched the card
25 prior to police arriving. The defense does not concede any prior search by Mr. Baltazar was
26 private. Any prior search by Mr. Baltazar, especially in light of his status and connections to
law enforcement, would be unlawful for the same reasons the police search was unlawful.

1 Metro officers knew of and acquiesced in any search Mr. Baltazar conducted after their arrival.
2 Mr. Baltazar is himself “involved in law enforcement.” Ex. D at 1:45-1:52. According to
3 Officer Bianco’s report, officers “[l]ook[ed] through the pictures using Baltazars cell phone,
4 which he voluntar[il]y let [officers] use.” Ex. A at 10. As in *Reed*, it appears officers were
5 present during the search, knew exactly what Mr. Baltazar was doing with the card in his phone,
6 and made no attempt to discourage him in the warrantless search. Officers here went further
7 than in *Reed*, taking part in the warrantless search by taking Mr. Baltazar’s phone from him and
8 using it to look through multiple images on the card. Second, Mr. Baltazar intended to help
9 police gather proof of a crime, as evidenced by his phone call to police reporting a crime. *Id.*
10 If Mr. Baltazar acted as a government instrument, the search was unlawful.

11 **3. Even if the prior searches were truly private, officers may**
12 **have exceeded the scope of any private search.**

13 Both Ms. Saito and Mr. Baltazar searched the SD card. Even if those searches did not
14 violate the Fourth Amendment, “the Government may not exceed the scope of the private
15 search.” *United States v. Jacobsen*, 466 U.S. 109, 116 (1984). “The additional invasions of
16 [Ditirro’s] privacy by the government agent must be tested by the degree to which they
17 exceeded the scope of the private search.” *Id.* at 115. Particularly in the digital media context,
18 police examining more files in an electronic folder than already searched by a private individual
19 may violate the Fourth Amendment. *United States v. Tosti*, 733 F.3d 816, 822 n.2 (9th Cir.
20 2013) (finding no violation where police viewed same exact images of computer tech’s search,
21 but leaving open “whether examining more files within the same electronic folder already
22 searched by a private individual would constitute a search for Fourth Amendment purposes”).

23 Here, officers may have exceeded the scope of any private search. A hearing is
24 necessary to determine the precise scope of each search, as the government’s discovery does
25 not provide a clear timeline. The images were located within “dozens of folders” on the card.
26 Ex. E at 97. Ms. Saito gave a conflicting account of her search to Detective Tooley. Ms. Saito

1 indicated that when she searched the card on September 9, 2015, she saw downloaded
2 pornography and “his own pornography,” though she did not know whether the images were of
3 children or adults. Ex. D at 10:14-10:28. Ms. Saito also indicated she saw “more than three”
4 images of adults with children, but later stated she immediately took the card out of her phone
5 upon seeing “one picture” of “juvenile stuff” in a “Restricted” folder because she did not want
6 the forensic data on her phone. *Id.* at 10:54-11:16, 11:51-12:14. The government’s discovery
7 does not indicate precisely what Mr. Baltazar saw on the card (if anything) before or after
8 officers arrived on September 10, 2015. Officer Bianco claims the only images viewed by
9 police that day were images of S.M. “and the other females that looked less tha[n] 16.” Ex. A
10 at 11. A hearing is necessary to determine the scope of each private and governmental search.

11 **4. The police unlawfully seized the SD card pursuant to their**
12 **illegal search.**

13 To enforce the Fourth Amendment, evidence unconstitutionally seized may not
14 constitute proof against the victim of the illegal search. *See Wong Sun v. United States*, 371
15 U.S. 471, 484-85 (1963). This exclusionary rule “prohibits the introduction of tangible
16 materials seized during an unlawful search [or seizure], and of testimony concerning knowledge
17 acquired during an unlawful search [or seizure].” *Murray v. United States*, 487 U.S. 533, 536
18 (1988) (internal citations omitted). “Beyond that, the exclusionary rule also prohibits the
19 introduction of derivative evidence both tangible and testimonial that is the product of the
20 primary evidence, or that is otherwise acquired as an indirect result of the unlawful seizure [or
21 seizure]” *Id.* at 536-37. By refusing to admit evidence obtained through unlawful police
22 conduct, “the courts hope to instill in those particular investigating officers, or in their future
23 counterparts, a greater degree of care toward the rights of an accused.” *Michigan v. Tucker*,
24 417 U.S. 322, 447 (1974). The SD card must be suppressed as fruit of the unlawful search.

1 **5. Metro’s search warrant does not establish probable cause and**
2 **is itself tainted by the illegal searches.**

3 All evidence officers obtained during the illegal warrantless search was tainted and
4 should not have been included in the affidavit for a search warrant. *See United States v. Vasey*,
5 834 F.2d 782, 788 (9th Cir. 1987) (citing *Wong Sun*, 371 U.S. 471). “The mere inclusion of
6 tainted evidence in an affidavit does not, by itself, taint the warrant or the evidence seized
7 pursuant to the warrant.” *Vasey*, 834 F.2d at 788 (citation omitted). “A reviewing court should
8 excise the tainted evidence and determine whether the remaining, untainted evidence would
9 provide a neutral magistrate with probable cause to issue a warrant.” *Id.* Here, absent
10 information obtained through the unlawful searches, the probable cause affidavit is insufficient
11 to establish probable cause. Ex. C at 57-58.

12 **B. The three-month delay in obtaining a search warrant was an**
13 **unreasonable seizure that violated Mr. Ditirro’s rights.**

14 The Fourth Amendment protects the “right of the people to be secure in their persons,
15 houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend.
16 IV. Even “a seizure lawful at its inception can nevertheless violate the Fourth Amendment
17 because its manner of execution unreasonably infringes possessory interests protected by the
18 Fourth Amendment’s prohibition on ‘unreasonable searches.’” *Jacobsen*, 466 U.S. at 124. An
19 unreasonable delay between the seizure of a package and obtaining a search warrant violates an
20 individual’s Fourth Amendment rights, warranting suppression. *United States v. Dass*, 849
21 F.2d 414, 414-16 (9th Cir. 1988). Courts determine whether the delay was “reasonable” under
22 the totality of the circumstances and on a case-by-case basis. *United States v. Sullivan*, 797
23 F.3d 623, 633 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 2408 (2016).

24 To determine whether the delay was unreasonable, courts balance “the nature and
25 quality of the intrusion on the individual’s Fourth Amendment interests against the importance
26 of the governmental interests alleged to justify the intrusion.” *Sullivan*, 797 F.3d at 633

(quoting *United States v. Place*, 462 U.S. 696, 703 (1983)). In balancing these interests, courts may consider whether the individual consented to a seizure and search, as well as the defendant's parolee status. *Sullivan*, 797 F.3d at 633. Suppression is the appropriate remedy for an unreasonable delay. *Dass*, 849 F.2d at 414 (affirming suppression where law enforcement unreasonably seized mailed packages for 7 to 23 days).

In *Dass*, the Ninth Circuit found the government's detention of mailed packages for 7 to 23 day was unreasonable. *Dass*, 840 F.2d at 415. "In holding that law enforcement acted unreasonably by detaining packages for 7 to 23 days before executing a search warrant, *Dass* implicitly determined that such a lengthy retention of mailed packages constituted a substantial intrusion into the possessory interests of the individuals who placed the packages in the mail." *Sullivan*, 979 F.3d at 613 (citing *Dass*, 840 F. at 415).

The Eleventh Circuit found a 21-day delay unreasonable in *United States v. Mitchell*, 565 F.3d 1347, 1353 (11th Cir. 2009). In *Mitchell*, ICE agents went to Mitchell's home based on a suspicion he was engaged in distributing and receiving child pornography. *Id.* at 1349. Mitchell made incriminating statements and consented to a search of his computer. *Id.* Agents removed the hard drive from the computer and obtained a search warrant three weeks later. *Id.* at 1349-50. In balancing the private interests against the governmental interest, the Eleventh Circuit noted the possessory interest at stake was "substantial," explaining:

Computers are relied upon heavily for personal and business use. Individuals may store personal letters, e-mails, financial information, passwords, family photos, and countless other items of a personal nature in electronic form on their computer hard drives. Thus, the detention of the hard drive for over three weeks before a warrant was sought constitutes a significant interference with Mitchell's possessory interest. Nor was that interference eliminated by admissions Mitchell made that provided probable cause for the seizure.

Id. at 1351. The Fourth Amendment's requirements for prompt search warrants apply "with even greater force to the hard drive of a computer, which is the digital equivalent of its owner's

1 home, capable of holding a universe of private information.” *Id.* at 1352 (citation omitted).
2 Balanced against the substantial possessory interest, the government’s only justification for the
3 delay was that the agent in the case went on a two-week training trip after seizing the hard drive.
4 *Id.* at 1351. The Eleventh Circuit held the delay was unjustified and unreasonable under the
5 circumstances. *Id.* at 1352.

6 Here, the delay was even longer than the *combined* delays in *Dass* and *Mitchell*. Metro
7 waited three months—seizing the SD card on September 10, 2015, and applying for a search
8 warrant on December 2, 2015. Ex. A at 11; Ex. C at 55. Mr. Ditiirro never consented to a
9 seizure or search of his card. Nor was he on parole or any other status that would reduce his
10 privacy or possessory interest in his property. Mr. Ditiirro maintained a significant possessory
11 interest in his SD card, which, like the hard drive in *Mitchell*, was capable of storing “personal
12 letters, e-mails, financial information, passwords, family photos, and countless other items of a
13 personal nature.” 565 F.3d at 1351. Indeed, the SD card had personal (non-contraband)
14 pictures, resumes, and documents stored on it. Ex. J at 42:50. Mr. Ditiirro’s interests were not
15 eliminated by any probable cause officers had that the SD card contained illegal content. *See*
16 *Mitchell*, 565 F.3d 1351. There is no discernable excuse in the discovery for Metro’s lengthy
17 delay. Accordingly, even if the initial seizure was justified, the 3-month delay was
18 unreasonable and the SD card should be suppressed.

19 In addition to the 3-month delay in seeking a search warrant, another 2-month delay
20 followed before Metro examined the card, heightening the unreasonableness of the delay.
21 Nevada law requires “[t]he officer taking property under the warrant [to] give to the person
22 from whom or from whose premises the property was taken a copy of the warrant and a receipt
23 for the property taken or [to] leave the copy and receipt at the place from which the property
24 was taken.” Nev. Rev. Stat. § 179.075. Metro’s Search Warrant Return form also indicates the
25 return must be made within ten days of the issuance of the warrant, and a copy of the search
26 warrant must be left with a “person or ‘at the place of search.’” Ex. C at 65. These requirements

comport with principles of notice, due process, and criminal procedure. However, none of those goals was met here. According to the ICAC report, Detective Tooley “served” a search warrant for the device that had been impounded in Metro’s Evidence Vault on December 2, 2015. Ex. E at 95. Detective Tooley then left a copy of the search warrant return with the “case file.” Ex. C at 65. Stashing a copy of the search warrant return in her own case file did not comport with Nev. Rev. Stat. § 179.075, Metro’s policy, or principles of notice, due process, or criminal procedure. For no apparent reason, two more months passed before the warrant was actually effectuated through an ICAC examination. This conduct unreasonably added to the 3-month delay in obtaining a search warrant in the first instance. Suppression is warranted.

C. Detective Miller and Agent Flaherty obtained statements from Mr. Ditirro in violation of his Fifth Amendment rights and *Miranda*.

The statements made by Mr. Ditirro on June 17, 2016, were not voluntary. Mr. Ditirro’s will was overborne by the psychological pressure and physical duress placed on him by law enforcement officers, who arrested him and questioned him at the FBI office just before his arraignment. The totality of the circumstances, including Mr. Ditirro’s lack of sophistication and the officers’ interrogation tactics, render his statements a product of police coercion. Furthermore, Detective Miller and Agent Flaherty used a two-step interrogation technique with midstream *Miranda* warnings to obtain the statements. Accordingly, the statements and evidence derived from those involuntary statements should be suppressed.

1. Mr. Ditirro made involuntary statements due to coercive police activity under the totality of the circumstances.

Involuntary or coerced statements are inadmissible at trial because their admission is a violation of a defendant’s right to due process under the Fifth Amendment. *Brown v. Horell*, 644 F.3d 969, 979 (9th Cir. 2011) (citations omitted). A confession is involuntary if it is not “the product of a rational intellect and a free will.” *Id.* A necessary predicate to finding a confession involuntary is that it was produced through coercive police activity. *Colorado v.*

1 *Connelly*, 479 U.S. 157, 167 (1986). Coercive police activity can be the result of either
2 “physical intimidation or psychological pressure.” *Brown*, 644 F.3d at 989 (citation omitted).

3 Whether a confession is involuntary must be analyzed within the totality of the
4 circumstances—“both the characteristics of the accused and the details of the interrogation.”
5 *Schneckloth v. Bustamonte*, 412 U.S. 218, 226-27 (1973). Courts should therefore “determine[
6] the factual circumstances surrounding the confession, assess[] the psychological impact on
7 the accused, and evaluate[] the legal significance of how the accused reacted.” *Id.* at 226. In
8 *Schneckloth*, for example, the Supreme Court considered “the youth of the accused, his lack of
9 education, or his low intelligence, the lack of any advice to the accused of his constitutional
10 rights, the length of detention, the repeated and prolonged nature of the questioning, and the
11 use of physical punishment such as the deprivation of food or sleep.” *Id.* (internal citations
12 omitted). The government must prove voluntariness by a preponderance of the evidence. *Lego*
13 *v. Twomey*, 404 U.S. 477, 489 (1972).

14 Here, under the totality of the circumstances, Mr. Ditirro’s statements were involuntary.
15 Early in the morning on June 17, 2016, an FBI SWAT team including *at least fifteen* state and
16 federal law enforcement officers arrested Mr. Ditirro in his home. Ex. I at 66-67. Detective
17 Miller questioned Mr. Ditirro for an unspecified period of time at his home, likely with a full
18 SWAT team dressed in uniform and with weapons swarming the studio apartment. At some
19 point, officer(s) or agent(s) took Mr. Ditirro to the FBI office, where Detective Miller
20 questioned Mr. Ditirro without recording and then with a recording for at least an hour.

21 Mr. Ditirro gave responses that indicate a particular vulnerability and lack of
22 sophistication. Lack of sophistication and having no experience with police are characteristics
23 that can render an individual particularly susceptible to interrogation techniques. *Campos v.*
24 *Stone*, --- F. Supp. 3d --- , 2016 WL 4426964, at *9 (N.D. Cal. Aug. 22, 2016) (finding
25 statements were not voluntary). For instance, when Detective Miller asked Mr. Ditirro what
26 his interests were, Mr. Ditirro responded, “I like drawing, basketball.” Ex. J at 7:28-7:39. When

1 Detective Miller asked Mr. Ditirro whether he was good at math, Mr. Ditirro responded, “Some.
2 I have my days and I don’t. Like, usually I can normally do math in my head, but like, not all
3 the time.” *Id.* at 8:10-8:36. And when Detective Miller also asked Mr. Ditirro whether he knew
4 the difference between adult and child pornography, and what an “adult” meant to him, Mr.
5 Ditirro responded an adult was “the big people.” *Id.* at 47:14-47:35.

6 Throughout the hour-long recorded interrogation, Mr. Ditirro expressed feeling light-
7 headed and that he could not think. Ex. J at 3:26 (“It’s hard for me to think.”); *id.* at 14:17-
8 14:29 (“It feels like my, my head is like when you work out too much and your muscle doesn’t
9 want to work anymore. That’s kinda how my head feels right now.”); *id.* at 54:54 (“It’s kind
10 of hard to make decisions right now.”). Whether the headaches resulted from wanting a
11 cigarette, as the agents joked, or something more serious, the added mental impairment and
12 physical discomfort is a factor for the Court to consider.

13 Detective Miller’s conduct is particularly troubling given that he knew Mr. Ditirro was
14 represented by counsel in the state case. Detective Miller is the probable cause affiant in both
15 state and federal complaints. Compare ECF No. 1, pp. 2-4, with Ex. F, pp. 4-5. The state case
16 docket clearly indicates Mr. Ditirro was represented by counsel on the date of the federal
17 interrogation. Ex. G. Detective Miller and Agent Flaherty well knew that Mr. Ditirro would
18 make his initial appearance (either with same counsel or appointed counsel) immediately
19 following the interrogation. Instead of scrupulously honoring Mr. Ditirro’s constitutional right
20 to counsel, the agents capitalized on Mr. Ditirro’s vulnerabilities. Mr. Ditirro’s statements were
21 involuntary under the totality of the circumstances and should be excluded.

22 **2. Detective Miller and Agent Flaherty used a two-step**
23 **interrogation technique.**

24 The Fifth Amendment guarantees no person “shall be compelled in any criminal case to
25 be a witness against himself.” Based on that guarantee, “the prosecution may not use statements
26 . . . stemming from custodial interrogation of the defendant unless it demonstrates the use of

1 procedural safeguards effective to secure the privilege against self-incrimination.” *Miranda v.*
2 *Arizona*, 384 U.S. 346, 444 (1966). One of the Supreme Court’s primary concerns in *Miranda*
3 was the temptation for law enforcement officers, operating with little or no supervision over
4 their investigative actions, to overbear the will of a defendant in an isolated custodial
5 interrogation setting. *Id.* at 461, 466.

6 *Miranda* warnings are necessary when a suspect in custody is interrogated by police.
7 *Thompson v. Keohane*, 516 U.S. 99, 102 (1995). Custodial interrogation is questioning initiated
8 by law enforcement officers after a person has been taken into custody or deprived of his
9 freedom. *United States v. Butler*, 249 F.3d 1094, 1098 (9th Cir. 2001). In determining whether
10 a suspect was in custody for the purposes of determining whether *Miranda* warnings were
11 required, the court determines whether there was a formal arrest or restraint on freedom of
12 movement to the degree associated with formal arrest. *Stansbury v. California*, 511 U.S. 318,
13 322 (1994). In addition to being in custody, the individual must also be subject to interrogation
14 to trigger the *Miranda* requirement. *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980).

15 Interrogation means questioning or “its functional equivalent,” including “words or
16 actions on the part of the police (other than those normally attendant to arrest and custody) that
17 the police should know are reasonably likely to elicit an incriminating response from the
18 suspect.” *Innis*, 446 U.S. 291 at 301. An “incriminating response” is any response, whether
19 inculpatory or exculpatory, that the prosecution may seek to introduce at trial. *Id.* at 302.
20 Whether the questioning constitutes an interrogation is an objective test that focuses on the
21 perception of the defendant; the officer’s subjective intent in asking the questions is relevant,
22 but not determinative. *See, e.g., United States v. LaPierre*, 998 F.2d 1460, n.6 (9th Cir. 1993);
23 *Innis*, 446 U.S. at 301-02. There can be doubt Mr. Dittiro was subject to a custodial
24 interrogation. He was formally under arrest and questioned at his home and at the FBI office
25 about his phone and Internet use, dating history, and the evidence police had against him.

Discovery reveals Detective Miller obtained statements from Ditirro in at least two rounds of questioning *prior* to the recorded interrogation—at Ditirro’s home and at the FBI office. Ex. J at 2:04, 6:02 (“We were talking just a second ago . . . Tell me this, ‘cause I was asking you at the apartment . . .”). Discovery provides no indication that those prior statements were *Mirandized*. Miller apparently obtained statements in a deliberate two-step interrogation with a midstream *Miranda* warning. *United States v. Williams*, 435 F.3d 1148, 1157 (9th Cir. 2006) (citing *Missouri v. Seibert*, 542 U.S. 600 (2004)). *Seibert* explained police may not obtain a confession by the use of a two-step interrogation strategy by deliberately withholding *Miranda* warnings until a suspect confesses, then following a *Miranda* warning and a repetition of the confession already given. 542 U.S. at 604, 609-11 (Souter, J., plurality opinion).

3. This Court should suppress the involuntary statements and evidence derived from those statements.

Mr. Ditirro’s statements should be suppressed because (1) they were involuntarily made and (2) they were elicited through a two-step interrogation technique. Although Mr. Ditirro did not “confess” in the classic sense, he made statements that are inculpatory when combined with other evidence. For instance, in response to Detective Miller’s pointed questions about Mr. Ditirro’s use of SD cards and how he saved “stuff” such as his resumes, Mr. Ditirro indicated he saved his resume on an SD card and that he gave an SD card to Rachel Saito. Ex. J at 41:45-44:36. This was not a random question. The ICAC examiner noted he recovered “the suspect’s resume” on the SD card seized by Metro. Ex. E at 97. The government should not be permitted to use these involuntary statements to bolster other witness testimony and its case-in-chief.

Mr. Ditirro’s statements on June 17, 2016, also led to physical fruits including subpoena returns. Detective Miller and Agent Flaherty specifically asked Mr. Ditirro for his username and passwords for MeetMe, Facebook, Twitter, Instagram, KIK, Zoosk, and his email addresses, as well as the name and details of his Internet service provider and phone provider.

Ex. J at 10:54-22:26:48. Agents used Mr. Ditirro's responses to subpoena a number of those companies, including MeetMe, Inc.⁶ Exhibit K, FBI Subpoena to MeetMe, Inc.

Should the Court find the statements were involuntary, the subpoena returns and any other derivative evidence should be suppressed as fruit of the poisonous tree. The Fifth Amendment "requires the exclusion of the physical fruit of actually coerced statements." *United States v. Patane*, 542 U.S. 630, 644 (2004); *but see id.* (explaining a *Miranda* violation, absent coercion, does not require derivative evidence to be suppressed). Accordingly, if the Court finds Mr. Ditirro's statements were involuntary under the totality of the circumstances, all derivative evidence must also be suppressed.

IV. CONCLUSION

Police unlawfully searched Mr. Ditirro's SD card without a warrant and seized the card pursuant to the search. Police then delayed obtaining a search warrant for three months, which constitutes an unreasonable seizure under the Fourth Amendment. Detective Miller and Agent Flaherty then obtained statements from Mr. Ditirro in violation of his Fifth Amendment rights and *Miranda*, and proceeded to obtain physical evidence derived from the involuntary statements. For each of these reasons, the SD card, Mr. Ditirro's statements, and evidence derived from the statements should be suppressed.

DATED this 24th day of October, 2016.

RENE L. VALLADARES
Federal Public Defender

By: /s/ Ryan Norwood

RYAN NORWOOD
Assistant Federal Public Defender
Attorney for Lonny Joseph Ditirro, Jr.

⁶ The government has indicated it is in possession 400 pages of subpoena returns, but the discovery has not yet been produced to the defense. The defense has made a number of other discovery requests that are still pending.

CERTIFICATE OF ELECTRONIC SERVICE

The undersigned hereby certifies that she is an employee of the Federal Public Defender for the District of Nevada and is a person of such age and discretion as to be competent to serve papers.

That on October 24, 2016, she served an electronic copy of the above and foregoing **MOTION TO SUPPRESS** by electronic service (ECF) to the person named below:

DANIEL BOGDEN
United States Attorney
ELHAM ROOHANI
Assistant United States Attorney
501 S. Las Vegas Blvd Ste 1100
Las Vegas, NV 89101

/s/ Nancy Vasquez, Legal Assistant

Employee of the Federal Public Defender

EXHIBIT A

Redacted by the FPD for
personal identifiers

EXHIBIT A

Las Vegas Metropolitan Police
Department
400 S. Martin Luther King Blvd.
Las Vegas, NV 89106



Case Report No.: LLV150910002991

Arrest / Detective Report

Administrative

Location [REDACTED] Las Vegas, NV 89121 Sector / Beat H1
 Occurred On (Date / Time) Wednesday 9/9/2015 12:00:00 AM Or Between (Date / Time)
 Reporting Officer 15086 - Blanco, Nicholas Reported On 9/10/2015
 Entered By 15086 - Blanco, Nicholas Entered On 9/10/2015 7:30:09 PM
 Supervisor 07044 - Cook, Ryan M Pro Squad SE 32 Follow Up
 Jurisdiction Las Vegas, City of Report Type Disposition Active
 Route To: Related Cases
 Connecting Reports Property Rpt
 Voluntary Statement
 Assisting Officers:
 09177 - Wilson, Garret G Officer
 07792 - Lange, Christopher J Detective

Offenses

Att Poss Porn Of Pers Under16, (1st)(F)-NRS 200.730.1
 Completed Yes Hate/Bias
 Entry Premises Entered Type Security Domestic Violence No
 Weapons Residence/Home Tools
 Criminal Activities

Victims

Name: UNKNOWN
 Victim Type Individual Written Statement Can ID Suspect
 Victim of 50390 - Att Poss Porn Of Pers Under16, (1st)(F)-NRS 200.730.1 Domestic Battery No
 SSN DOB Age 05 Sex Unknown Race Unknown Ethnicity Unknown
 Height Weight Hair Color Eye Color
 Employer/School Occupation/Grade Work Schedule
 DLN DL State DL Country
 Resident Unknown Tourist Departure Date
 Injury Injury Weapons
 Addresses
 Phones
 Email
 Offender Relationships
 S - Dittiro, Lonny Joseph Jr. Relationship Unknown
 Domestic Violence Information
 Relationship to Suspect Primary Aggressor Determined
 Intimate Relationship Drug/Alcohol Involvement
 Voluntary Statement DV Information Provided
 Injury Severity Medical Attention
 Photos Taken

Notes:

Suspects

Name: Dittiro, Lonny Joseph Jr.
 Written Stmt. No Alerts Non-English No Language
 Aliases
 Moniker
 Scope ID DOB [REDACTED] Age 33 SSN [REDACTED]
 Race White Ethnicity Not Hispanic or Latino Build Handedness

11/3/2015 6:46 AM

LLV150910002991

Page 1 of 5 00007
 SER 0150

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Sex Male Height 6' 4" Weight 250 Hair Color Brown Eye Color Brown
 Employer/School Occupation/Grade
 Hair Length Hair Style Eyes
 Complexion Facial hair Teeth
 Appearance
 Speech
 DLN [REDACTED] DL State Nevada DL Country USA
 Resident Resident Tourist Departure Place of Birth
 Habitual Offender Status MO Factors
 Primary Means of Attack/Weapon Weapon Features
 Employer/School Occupation/Grade

Scars, Marks and Tattoos
 Addresses
 Residence [REDACTED]

Phones

Domestic Violence Information
 TPO in Effect
 Injury Severity
 Photos Taken

Drug/Alcohol Involvement
 Medical Attention
 Suspect Demeanor

Voluntary Statement
 DV Info provided

Notes:

Arrestees

Witnesses

Witness Name: Saito, Rachael

Written Statement Yes Can ID Suspect Yes Testify
 SSN [REDACTED] DOB [REDACTED] Age 40 Race White Ethnicity Not Hispanic or Latino
 Sex Female Height 5' 10" Weight 180 Hair Color Brown Eye Color Blue
 Addresses
 Residence [REDACTED]
 Phones
 Cellular [REDACTED]
 Notes:

Other Entities

Name: Contact Gonyea, Tiffany

Written Statement No Can ID Suspect Yes
 SSN [REDACTED] DOB [REDACTED] Age 30 Race White Ethnicity Not Hispanic or Latino
 Sex Female Height 5' 5" Weight 190 Hair Color Brown Eye Color Hazel
 Employer/School Occupation/Grade
 Tourist Unknown Departure Date
 DLN DL State DL Country
 Addresses
 Residence [REDACTED]
 Phones
 Home/Residence [REDACTED]
 Missing Person / Runaway

Physical Appearance Physical Build Headwear Color
 Skin Complexion Eye Description Teeth Description
 Hair Length Hair Style Facial Hair
 Speech Characteristics Speech Manner Dominate Hand
 Injury or Condition Distinctive Jewelry
 Medical Info Blood Type
 Headwear Color Probable Destination
 Disappearance Type How long at present address
 Responsible Adult POB
 Last seen by Last seen where Last seen Date/Time
 Last seen wearing Fingerprints Available

11/3/2015 6:48 AM

LLV150910002991

SER 0151

00008

Footprints Available
Photo Attached

X-rays Available
Corrected Vision

Dental Available
Circumcised

Scars, Marks, Tattoos:

Dead Body Report Information

Coroner/Physician
Coroner Case #
Case of Death
Public Administrator
Facility Name
Photos Taken
Synopsis

Coroner/Physician Name
Coroner Seal #
Date/Time Pronounced
Hospital/Mortuary
Attendant Name

Investigation

Scene

Body

Evidence at Scene

Notes:

Name: Contact Baltazar, Stephen

Written Statement No

Can ID Suspect Yes

SSN [REDACTED] DOB [REDACTED] Age 41 Race White Ethnicity Not Hispanic or Latino
Sex Male Height 5' 8" Weight [REDACTED] Hair Color Black Eye Color [REDACTED]
Employer/School [REDACTED] Occupation/Grade [REDACTED]
Tourist [REDACTED] Departure Date [REDACTED]
DLN [REDACTED] DL State [REDACTED] DL Country [REDACTED]

Addresses

Residence [REDACTED]

Phones [REDACTED]

Home/Residence [REDACTED]

Missing Person / Runaway

Physical Appearance
Skin Complexion
Hair Length
Speech Characteristics
Injury or Condition
Medical Info
Headwear Color
Disappearance Type
Responsible Adult
Last seen by
Last seen wearing
Footprints Available
Photo Attached

Physical Build
Eye Description
Hair Style
Speech Manner

Headwear Color
Teeth Description
Facial Hair
Dominate Hand

Distinctive Jewelry

Blood Type

Probable Destination

Missing Before
Relationship to MP
Last seen where

How long at present address
POB

Last seen Date/Time
Fingerprints Available
Dental Available
Circumcised

X-rays Available
Corrected Vision

Scars, Marks, Tattoos:

Dead Body Report Information

Coroner/Physician
Coroner Case #
Case of Death
Public Administrator
Facility Name
Photos Taken
Synopsis

Coroner/Physician Name
Coroner Seal #
Date/Time Pronounced
Hospital/Mortuary
Attendant Name

Investigation

Scene

Body

Evidence at Scene

11/3/2015 6:46 AM

LLV150910002991

SER 0152

00009

Notes:

Properties

Type: Electronics (TV, Music, CD/DVD Players, etc...)

Status	Impounded	Quantity	1	Value		Color	Black
Description	16 gb scandisk MicroSD card						
Manufacturer	scandisk	Model		Serial No./VIN			
Vehicle Year		Body Type		Lic Plate Exp			
Lic Plate #		Lic Plate State					
Insurance Company							
Owner	S - Ditirro, Lonny Joseph Jr.						
Notes:							

Detailed Property Information

Length	Width	Height
Horse Power	Propulsion Serial #	
Caliber	Barrel Length	
Features		

Recovered Property Information

Recovered Date	Recovered Value
Recovered Location	Recovered Reason
Recovered By	Recovered Stock #
Owner Type	Released To
Insurance Rep.	Tow Company

Solvability

Modus Operandi

MO General		Surrounding Area	Middle of Block
Occupied?	Yes	Specific Premise	Room
General Premise	Apartment		
MO Against Property			
Entry Point	Exit Point		Entry Location
Entry/Attempt Method	Entry Tool		Vehicle Entry
Safe Entry	Suspect Actions		Additional Factors
Victim Location	Electronic Locks		Video Surveillance
Maid	Inspectress		
MO Against People			
Victim-Suspect Relationship		Pre-Incident Contact	
Victim Condition		Suspect Solicited/Offered	
Suspect Pretended to Be		Suspect Actions	
Sexual Acts	Other	Vehicle Involvement	

Narrative

On September 10th 2015 Officer N. Bianco p# 15086 and Officer G. Wilson P# 9177 were operating in marked patrol unit 3K2 received a Child Molestation call at [REDACTED]. Upon location we came into contact with the P/R Baltazar, Stephen DOB [REDACTED] and his wife Gonvea, Tiffany DOB [REDACTED]. Baltazar stated that his friend Saito, Rachael DOB [REDACTED] found her ex-boyfriend Ditirro, Joseph DOB [REDACTED] MicroSD card in her bed. When Saito put the card into her phone, what appeared to be child pornography was stored on the card, and initially didn't want to speak to the police because she was scared that Ditirro would retaliate so she gave the card to Baltazar.

Looking through the pictures using Baltazars cell phone, which he voluntary let us use, were multiple pornographic images. Multiple images in particular were naked females that appeared to be less than 16 years old performing sexual acts. Saito arrived to the apartment, and she stated that one of the females that appeared to be below 16 goes by the name of 'S [REDACTED]', and according to Ditirro's facebook graduates in 2017. Saito also mentioned that Ditirro once drove down to Texas to meet up with the female. Other images on the MicroSD card that Saito mentioned were what she said appeared to be a 5 Y/O child performing sexual acts on that of a adult male.

Looking through the MicroSD card, the only images viewed that were in question was the pictures of 'S [REDACTED] and the other females that looked less than 16. Salto stated that the pictures of the children less than 5 are in a specific folder on that card. Detective C. Lang P# 7752 of Sex Crimes was contacted regarding this case. The MicroSD was impounded connecting to this event number which has the pornographic images on it.

Patrol Follow-Up

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EXHIBIT B

Case: 19-10250, 09/21/2020, ID: 11830255, DktEntry: 30, Page 157 of 229

EXHIBIT B

SER 0155

Page 1 of 1LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENTEvent #
LV15010002991

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>POSS. CHILD PORNOGRAPHY LESS THAN 16 Y/O</u>	Date Occurred <u>9/16/15</u>	Time Occurred <u>1823</u>
Location of Occurrence <u>LV NV 89169</u>	Sector/Beat <u>41</u>	<input type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>Saito, Rachael Lee</u>						Date of Birth <u>[REDACTED]</u>		Social Security # <u>[REDACTED]</u>	
Race <u>W</u>	Sex <u>F</u>	Height <u>5'10</u>	Weight <u>180</u>	Hair <u>Brn Blk</u>	Eyes <u>Brown</u>	Work Schdl. (Hours) <u>9-3pm</u>	(Days Off) <u>Varies</u>	Business / School <u>[REDACTED]</u>	
Residence Address: (Number & Street) <u>[REDACTED]</u>			Bldg./Apt.# <u>[REDACTED]</u>	City <u>[REDACTED]</u>	State <u>[REDACTED]</u>	Zip Code <u>[REDACTED]</u>	Res. Phone <u>[REDACTED]</u>		
Bus. (Local) Address: (Number & Street) <u>[REDACTED]</u>			Bldg./Apt.# <u>[REDACTED]</u>	City <u>[REDACTED]</u>	State <u>[REDACTED]</u>	Zip Code <u>[REDACTED]</u>	Bus. Phone <u>[REDACTED]</u>		
Occupation <u>Waitress</u>			Depart Date (if visitor) <u>[REDACTED]</u>			Best place to contact you during the day <u>[REDACTED]</u>			
Best time to contact you during the day <u>[REDACTED]</u>			Can You Identify the Suspect? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No						

DETAILS 9-9-2015 I was laying in bed and found a SD card stuck to my leg.

I put in my phone and saw so much Porn which included kiddi Porn Children in full penetration and oral with grown men. Children were ⁵⁻¹⁰ ~~various~~ various ages.

Also A girl whom graduates 2017 a teen - whom is on Lonny Joseph Dittreos FB was with him few weeks ago and she is a minor he is about 34 yrs, so he traveled all the way to Whitehouse Tx to be with her for this.

Most importantly - the Child extreme minor porn is absolutely victims and really bothers me, ~~period~~ because these are acts of crimes against most vulnerable of humanity.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) LV NV 89169 ON THE 10th DAY OF SEPT AT 205 (AM/PM), 1000.

Witness/Officer: [Signature] (SIGNATURE)Witness/Officer:
LVMPD 65 (REV. 6-08)N. Bianco
(PRINTED)PH 10026

SIGNATURE OF PERSON GIVING STATEMENT

[Signature]

00012

SER 0156

EXHIBIT C

Redacted by the FPD for
personal identifiers

EXHIBIT C

LVMPD Event 150910-2991

APPLICATION AND AFFIDAVIT
for
SEARCH WARRANT

STATE OF NEVADA)
)
COUNTY OF CLARK)

I, Detective Shannon Tooley P# 6224, being first sworn deposes and states that she is the Affiant herein and is a Police Detective with the Las Vegas Metropolitan Police Department (LVMPD). Affiant is currently assigned to the Detective Bureau, Crimes Against Youth and Family Bureau, Internet Crimes Against Children Task Force (ICACTF) and has been employed with the Las Vegas Metropolitan Department as a Police Officer since June of 1999. There is probable cause to believe that certain property hereinafter described will be found on the following described premises, to wit:

Digital Storage Device impounded under LVMPD event number 150910-2991, currently located in the LVMPD Evidence Vault, 3201 Technology Court, Las Vegas, Clark County, Nevada 89101, specifically:

1. SanDisk Micro Secure Digital Card – 16 GB

The digital data referred to and sought to be analyzed / seized from the digital storage device consists of the following:

1. Any data evidence of visual depictions/representations (images and videos) that depict minors (real or animated) in an erotic, sensual or sexual manner. This would include depictions of children engaged in any form of sexual activity or simulated sexual activity, children displaying their genitals in a lewd and lascivious manner, children displayed in any manner of undress (partial or complete), and children who are clothed, but displayed in a sexually suggestive, erotic, or sensual manner.
2. Any data evidence of Internet activity associated with web sites visited relating to the subject matters involved in this investigation, including but not limited to children, child sexual exploitation, child pornography, incest, and file sharing etc.
3. Any data evidence of digital communications (such as e-mail, instant messaging / chatting, file sharing) relating to the subject matters involved in this investigation, including, but not limited to children, child sexual exploitation, child pornography, incest and file sharing etc.
4. Any data evidence relating to file sharing applications and processes.
5. Any text based data / files relating to the subject matters involved in this

LVMPD Event 150910-2991

investigation including, but not limited to children, child sexual exploitation, child pornography, incest and file sharing etc.

6. Any text based data / files relating to Internet search terms, email addresses, screen names, web site addresses, children's names and passwords.
7. Any data / files which would tend to establish the identity of persons in control of said data, which items of property would consist in part of and include, but not be limited to personal pictures, documents, education/work certificates, e-mail correspondence, bills, receipts, bank account information, software registration information, computer account information, file date access information, web site account information, Internet activity information which tend to show possession, dominion and control over said device(s) / data of investigative interest.
8. Together with the aforementioned to be seized, is other indicia evidence of computer usage, ownership, possession, or control of said evidence / data.

Digital Evidence Forensics Component

Because of the nature of this investigation, as outlined below in the probable cause of this affidavit, your affiant is requesting authorization to remove any items of digital related evidence to a location suitable for the analysis of this evidence with the LVMPD.

Authorization is requested to conduct a digital forensic analysis, using industry standard accepted methods, of any items of digital evidence recovered pursuant to this search warrant.

Such examination will be conducted by an individual trained in the analysis of digital evidence according to accepted industry standard methodologies in a proper lab environment at the Las Vegas Metropolitan Police Department and/or its affiliates.

Also, this analysis may include the search of password protected and/or encrypted files.

It should be noted that digital evidence analysis is a highly technical process requiring trained professionals using appropriate equipment, software and techniques to complete an analysis. This digital evidence analysis can be a lengthy process. In fact, once an investigator is assigned, it is not unusual for the analysis of a single hard drive to take up to two or more weeks to complete the analysis and reporting process.

Affiant Background Information

Affiant is a Police Detective with the Las Vegas Metropolitan Police Department who is cross-deputized as a Special Deputy United States Marshal with the Federal Bureau of Investigation, assigned to the Internet Crimes Against Children Task Force. As a result of her assignment, she investigates matters relating to child exploitation and the use of high technology and the Internet. This typically involves cases related to child luring and child pornography.

LVMPD Event 150910-2991

Affiant is currently in her sixteenth year as a law enforcement officer with the LVMPD, 11 years of which she has been conducting felony sex crimes investigations (sexual assault, child sexual abuse, child pornography and child luring etc.). She has been working with the Las Vegas Internet Crimes Against Children Task Force, where she has been currently assigned for the past 8 years.

Affiant has conducted, participated in, and/or consulted in over 1000 sexual related crimes, including investigations of individuals and locations suspected of the sexual exploitation of children and has participated in the execution of numerous search warrants which have resulted in the seizure of multiple items of child pornography and various items of evidence consisting of child sexual exploitation and abuse.

Affiant has received specialized training in the realm of sex crimes and sexually motivated crimes from the LVMPD, FBI, Search Group, Public Agency Training Council, United States Department of Justice Office of Juvenile Justice, Internet Crimes Against Children Program, and Project Safe Childhood. Affiant continues to stay abreast of investigative subject matters related to sexually motivated crimes by participating in and reading professional papers and articles written on related subject matters by industry professionals.

As it relates to computers and digital forensic analysis, Affiant has received training through Guidance Software Corporation, National White Collar Crime Center, Search Group and Paraben Corporation. Also, Affiant is certified in handheld (cellular phones/PDA's) data recovery.

Affiant has over 500 hours of training, course work and study in child sexual abuse, child exploitation and computer investigations / forensics.

Probable Cause Offering

This affidavit is made in support of an application for warrant to search for and seize instrumentalities, fruits, and evidence of violations of Nevada Revised Statutes-Possession of Child Pornography, NRS 200.730

The statements contained in this affidavit are based in part on information gathered through fellow officers, and on Affiant's investigation, training, experience and background as a police detective with the Las Vegas Metropolitan Police Department. Since this affidavit is being submitted for the limited purpose of securing a search warrant, Affiant has not included each and every fact known to her concerning this investigation. Affiant has set forth only the facts that she believes are necessary to establish probable cause to believe that evidence of violations of NRS 200.730 is located on the aforementioned item.

On September 10, 2015, LVMPD Officers N. Bianco, P#15086 and G. Wilson, P#9177 were dispatched to [REDACTED] reference a child exploitation call. Upon arrival, officers made contact with the person reporting (PR), Stephan Baltazar, DOB: [REDACTED] and his wife, Tiffany Gonyea, DOB: [REDACTED]. Per

LVMPD Event 150910-2991

Baltazar, his friend, Rachael Saito, DOB: [REDACTED], found a micro Secure Digital (SD) card in her bed. Per Saito, the SD card belongs to her ex-boyfriend, Lonny Joseph Dittiro, DOB [REDACTED]. Baltazar described Saito put the SD card in her phone and discovered what appeared to be child pornographic images on the SD card. Saito, in fear Dittiro would retaliate against her if she went to the police, provided the card to Baltazar.

Officers, using Baltazar's cell phone viewed the SD card. Officers observed several images of females, who appeared to be under the age of 16, engaged in sexual acts.

Saito arrived while officers were still on scene and stated one of the females on the SD card who appears to be under 16, goes by the name of S [REDACTED] and per Dittiro's facebook page, graduates in 2017. Per Saito, Dittiro drove to Texas to meet with S [REDACTED]. Also, Saito described seeing an image of a child who appeared to be 5 years old engaged in sexual acts with an adult male.

This report was documented under LVMPD event 150910-2991. Officer Bianco impounded the SanDisk Micro SD card under the same event.

On November 30, 2015, Detective Tooley conducted a recorded interview with Saito. Saito described her and Dittiro had begun dating in February of this year. Shortly thereafter, Dittiro moved in to her apartment at [REDACTED] Nevada. Saito described she had discovered Dittiro had been chatting on Facebook with a 15 year girl named S [REDACTED] M [REDACTED] from Wichita, Texas.

Saito described she and Dittiro broke up around July, but began a casual relationship in August; however, are no longer together. Saito described, in August, Dittiro told her he was going to visit his mother who lives in El Paso, Texas, but Saito believes Dittiro met up with S [REDACTED].

Saito described on or about September 9, 2015, while in bed, she discovered a micro SD card stuck to her leg. Saito believed it to be Dittiro's SD card because he had asked if she had seen the card. Saito described she placed the SD card in her phone and observed both clothed and nude pictures of Dittiro, images of Dittiro engaged in sexual acts with a child she believes is S [REDACTED]. Also, Saito located images of other children who appear to be under the age of 16 engaged in sexual acts. Specifically, Saito described an image of a female child around the age of 12 engaged in sexual intercourse with an adult male.

Based on training and experience, Affiant knows micro SD cards can store images, videos and other digital files. Affiant knows users can store files to a SD card by capturing images and videos using their cellular phone, downloading files from the internet, and transferring digital files to the SD card.

Affiant believes a search of the SanDisk SD card will reveal evidence of child sexual exploitation and ownership.

Child Pornography, Collecting and Suspects Information

LVMPD Event 150910-2991

Affiant knows, through training and experience, as well as the training and experience of other Detectives, that child pornography is not readily available in retail establishments in the United States because it is illegal. Accordingly, individuals who wish to obtain child pornography do so by ordering it from abroad, subscribing to Web sites and groups or by discreet contact with other individuals who share their interests and have it available. The use of computers to traffic in, trade or collect child pornography has become one of the preferred methods of obtaining this material. An individual familiar with a computer will use it in some private location to interact with another individual or a business offering such materials. The use of a computer offers individuals interested in obtaining child pornography a sense of anonymity, privacy and secrecy not available elsewhere, as well as the added benefit of speedy transmissions and communications.

Also, Affiant knows through training and experience, the most effective way to expand a collection of child pornography is to offer another collector, via a trade over the Internet, images that the trading partner does not already possess. Accordingly, it is necessary to keep a great number of images in storage so as to have adequate material to allow participation in this informal barter system and thus collectors of child pornography tend to retain it for long periods of time. This tendency is enhanced by the increased sense of security that a computer provides. In addition to the emotional value the images have to the collector, the images of child pornography are intrinsically valuable for trading and/or selling and therefore are rarely destroyed or deleted by a collector. In addition, persons who procure child pornography and who have a proclivity for sexual activity involving children, obtain and retain magazines, films, videos, pictures and other items of child pornography, as well as correspondence, advertising, bills and notes relating to sexual activity involving children for long periods of time and do not dispose of or destroy such materials except to trade with others in exchange for similar items. Individuals who procure child pornography normally and generally keep such material in their residence or other secure location to ensure convenient and ready access as well as to ensure the degree of privacy necessary to enjoy the collection.

Collectors of child pornography who use personal computers in their homes tend to retain their personal files and data for extended periods of time, even if a person has replaced, traded in or "upgraded" to a new personal computer. Affiant knows personal computer users to routinely transfer most of their data onto their new computers when making an upgrade. This data transfer is often done by saving files from the old computer to media sources, then opening them onto the new computer and saving them to the new hard drive. Visual data such as child pornography is as likely, if not more so, to be transferred to a person's new or upgraded computer system.

Persons involved in the viewing, sending or receiving of child pornography tend to retain it for extended periods of time, even spanning many years. Those interested in child pornography prize the visual images they have obtained, traded and/or sold. It is also understood that no matter how much child pornography a collector has, he never has enough and rarely throws anything away. Another typical feature of a child pornography collection is its constancy. Even if evidence of the existence of a child pornography collection is years old, chances are, he still has the collection; only now, it is larger.

Affiant knows these types of individuals, involved in child pornography, also collect and maintain collateral materials, such as erotica and educational material. Erotica is anything that serves or fuels a sexual purpose for a given individual. Some of the more common types of erotica for these individuals interested in child sexual exploitation / child pornography are collections of images of children in different settings to include, those in different stages of undress, those wearing bathing suits, those at play, those wearing tight clothes or those who are even dressed but are portrayed in a promiscuous, sensual or erotic manner. Additionally, this erotica can include drawings of children and child pornography, cartoons of children and child pornography, diaries relating to children or the offenders interest in children, letters, writings or stories about children and child sexual exploitation etc. Educational material is anything that enhances an individual's ability to commit a sexual related crime, circumvent or thwart law enforcement, and/or manipulate a child, parent or guardian. These typically include books, writings, or articles on these listed subject matters.

Computers, Technology and Digital Forensics

Computer related, digital evidence can be located throughout a hard drive or other digital media by employing a number of forensically sound, industry standard techniques.

In addition to items that a user creates and intentionally saves or downloads from a device or the internet and intentionally saves, a computer forensic analyst can also recover and document items that have been deleted by a user. Computer files and evidentiary remnants of files can be recovered months or even years after they have been downloaded onto a hard drive, deleted, or viewed via the internet. It should be noted, that items deleted from a computer hard drive or other digital media by a user, are not actually erased / eradicated from it. Deleted items are only removed from the user's active view and the space on the hard drive / media that contained the items are marked as available for use. As such, those items / data still remain, intact, on the hard drive until overwritten by other random computer usage. These deleted items can then be recovered using computer forensic practices. Because of this, deleted data can often remain on a hard drive for years before being overwritten and irretrievable.

Additionally, there are many other valuable artifacts and system files that can and do exist on computer hard drives and other digital media; that a computer user is completely unaware of, that tracks their activities and computer usage, which can be recovered, interpreted and documented during analysis.

Specifically regarding on-line communication mediums like Email and Instant Messaging "chat" clients, records of communications can be intentionally saved by a user, saved by the client program itself, archived, and/or later deleted, or cached to the Windows pagefile.sys a.k.a. "swap file" which is a form of virtual memory used by Windows that writes data in memory to the hard drive to assist it in memory usage, which can be recovered during analysis. As a result, even communications between two individuals in the on-line, internet realm, often exists even though the user never intended it to. As previously stated, this evidence can exist for very long periods of time.

LVMPD Event 150910-2991

Sealing Information

Affiant requests that this Affidavit be sealed due to the fact this investigation involves child sexual exploitation and the fact this is an ongoing investigation where potential victims have yet to be identified. Affiant believes that if the suspect becomes aware of this investigation, it may place victims in harm's way and evidence may be destroyed.

Affiant also knows based on experience that computer forensic examinations often reveal additional unidentified suspect information such as email accounts and online storage servers, and in many cases, additional computers which have yet to be identified and may contain additional evidence of criminal acts committed by the subject(s) of this investigation or new information revealing additional suspects not yet identified.

Affiant knows that searching computer systems is a highly technical process which requires specific expertise, specialized equipment and applications, a significant amount of time and a proper environment suitable for a forensic analysis. It is therefore necessary to perform this search in a controlled laboratory type environment, not out in the field.

Affiant knows that searching items of digital evidence can be a lengthy and arduous process that takes a significant amount of time to complete, which is exacerbated by the large volumes of data that is capable of being stored in a digital medium. In addition to that, current case loads and differing case assignment priorities are likely to cause some searches to be halted while other cases of higher priorities are re-assigned for priority analysis. As a result, it is not unusual for some forensic analysis searches to take several months before they are completed from beginning to end.

Affiant therefore requests authorization to conduct a complete and thorough computer forensic analysis of the **SanDisk Micro Secure Digital Card – 16 GB** already in the possession of the LVMPD, searching for the previously listed items of evidence located in the form of data within.

Wherefore, Affiant requests that a Search Warrant issue directing a search for and seizure of the aforementioned items at the location set forth.

Detective S. Tooley P# 6224, AFFIANT
Las Vegas Metropolitan Police Department

Subscribed and sworn to before me this 24 day of Dec, 2015

JUDGE

Approved by: _____

Las Vegas Metropolitan Police Department
SEARCH WARRANT

STATE OF NEVADA)
)
COUNTY OF CLARK)

The State of Nevada, to any Peace Officer in the County of Clark, proof by Affidavit having been made before me by Detective Shannon Tooley, P# 6224, LVMPD, said Affidavit attached hereto and incorporated herein by reference, that there is probable cause that certain property, namely:

1. Any data evidence of visual depictions/representations (images and videos) that depict minors (real or animated) in an erotic, sensual or sexual manner. This would include depictions of children engaged in any form of sexual activity or simulated sexual activity, children displaying their genitals in a lewd and lascivious manner, children displayed in any manner of undress (partial or complete), and children who are clothed, but displayed in a sexually suggestive, erotic, or sensual manner.
2. Any data evidence of Internet activity associated with web sites visited relating to the subject matters involved in this investigation, including but not limited to children, child sexual exploitation, child pornography, incest, and file sharing etc.
3. Any data evidence of digital communications (such as e-mail, instant messaging / chatting, file sharing) relating to the subject matters involved in this investigation, including but not limited to children, child sexual exploitation, child pornography, incest and file sharing etc.
4. Any data evidence relating to file sharing applications and processes.
5. Any text based data / files relating to the subject matters involved in this investigation, including but not limited to children, child sexual exploitation, child pornography, incest and file sharing etc.
6. Any text based data / files relating to Internet search terms, email addresses, screen names, web site addresses, children's names and passwords.
7. Any data / files which would tend to establish the identity of persons in control of said data, which items of property would consist in part of and include, but not be limited to personal pictures, documents, education/work certificates, e-mail correspondence, bills, receipts, bank account information, software registration information, computer account information, file date access information, web site account information, Internet activity information which tend to show possession, dominion and control over said device(s) / data of investigative interest.

LVMPD Event 150910-2991

8. Together with the aforementioned to be seized, is other indicia evidence of computer usage, ownership, possession, or control of said evidence / data.

Is presently located at/on:

Digital Storage Device impounded under LVMPD event number 150910-2991, currently located in the LVMPD Evidence Vault, 3201 Technology Court, Las Vegas, Clark County, Nevada 89101, specifically:

1. SanDisk Micro Secure Digital Card – 16 GB

As I am satisfied that there is probable cause to believe that said property is located as set forth above and that based upon the affidavit attached hereto there are sufficient grounds for the issuance of the Search Warrant.

You are hereby commanded to search forthwith said premises for said property, serving this warrant between 7 a.m. and 7 p.m., and if the property is there to seize it, prepare a written inventory of the property seized, and make a return for me within 10 days.

Dated this 7th day of June, 2015

JUDGE

LVMPD Event 150910-2991

Las Vegas Metropolitan Police Department

IN RE: Search Warrant for)
)
)
 premise known as)
 SanDisk Micro Secure Digital Card – 16 GB)
 _____)

ORDER SEALING
AFFIDAVIT

Upon the ex parte application of Detective Shannon Tooley a commissioned officer with the Las Vegas Metropolitan Police Department and Affiant, to seal the affidavit in support of the attached search warrant, and for good cause appearing therefore,

IT IS HEREBY ORDERED that the affidavit in support of the attached search warrant be ordered sealed pending further order of this Court except that copies may be provided to the office of the Clark County District Attorney and the District Attorney may provide copies to a Defendant in a criminal proceeding as part of the criminal discovery process, and

IT IS FURTHER ORDERED a copy of this order sealing the affidavit be left at the premises along with the search warrant in lieu of the affidavit in support of the warrant.

Dated this 10 day of Dec, 2015

Shannon Tooley
 JUDGE

 AFFIANT

Page 1 of 1

(Must be made within 10 days of issuance of Warrant)

SHARPER MOUNTAIN SLOPE DENZUKI CANYON 1667

A copy of this inventory was left with Casey Miller

(name of person or 'at the place of search')

The following is an inventory of property taken pursuant to the warrant:

This inventory was made by: 162241787

(at least two officers including affiant if present. If person from whom property is taken is present include that person.)

EXHIBIT D

Case: 19-10250, 09/21/2020, ID: 11830255, DktEntry: 30, Page 171 of 229

EXHIBIT D

SER 0169



EXHIBIT E

EXHIBIT E

150910-2991

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
ICAC TASK FORCE**



EXAMINER'S REPORT

EXAMINER:	MATT TRAFFORD P#14286
EVENT NUMBER:	150910-2991
DATE COMPLETED:	03-07-16

Summary:

On 12-02-15, Det. S. Tooley #6224 of the Las Vegas Metropolitan Police Department's Internet Crimes against Children Task Force Unit served a search warrant for a digital storage device that had been impounded in the LVMPD Evidence Vault for evidence relating to the crimes of Possession of Child Pornography as defined by NRS 200.730.

Det. Tooley's search warrant allowed for the below listed item to be examined for evidence relating to the above mentioned crimes. Please see below for a description of the item in question.

On 02-18-16, I was assigned this case for examination. This was also the date that I picked up the evidence from the evidence vault and brought it back to the ICAC Task Force office for examination.

150910-2991

Forensic Tools Used:

Access Data's FTK 5.6, Encase 6.19 Imager, and NetClean.

Media Examined:

Package 1 Item No. 1

San Disk Micro Media Card 16GB Ultra Plus

Investigative Findings:

All collected items and findings were bookmarked and placed onto a thumb drive in electronic reports for investigative review. It will be the responsibility of the investigating detective to review the electronic reports for their evidentiary value.

Photos of Evidence

This folder contains 1 photograph of the evidence that I examined.

Package 1 Item No. 1

NetClean Summary

I used a program called NetClean that contains hash databases that are of known images and videos relating to child exploitation. The hash databases identify the known images and videos and categorize them into pre-categorized files.

I was able to recover 254 images and 42 videos that were categorized as "Child Abuse Material (CAM)-Illegal."

I was able to recover 111 images and 22 videos that were categorized as "Child Exploitation (non_CAM)/Age Difficult."

I was able to recover 30 Images that were categorized as being "CGI/Animation-Child Exploitative."

Lastly I recovered 235 images of the suspect, "Lonny Dittiro." The images of the suspect help shows ownership of this San Disk Micro Media Card.

Please review the entire NetClean report for its evidentiary value.

150910-2991

FTK Report

Once I completed the NetClean report I loaded the image file into FTK so I could easily bookmark additional images that didn't fall into the child pornography categories that I listed in the NetClean report.

I discovered that the suspect had created dozens of folders that he titled by name. Some of the titles contained a number at the end that might indicate the age of the individual.

Based on detectives Tooley's affidavit the suspect was communicating and possibly meeting with girls he had listed by folder names.

One such folder is titled, "Item No. 1 Folder T [REDACTED] H [REDACTED] 13." There are actual images of the suspect with this individual. I also captured images and screenshots of letters that possibly show how this individual had fallen for the suspect. One screenshot lists the name of "T [REDACTED] Ditirro."

A second folder that is titled, "Item No. 1 Folder S [REDACTED] L [REDACTED] M [REDACTED]" contains images of an individual who played on the girls Junior High basketball team named, "NJH Ladycats." This individual is also seen in image with the suspect.

Based on Det. Tooley's affidavit the suspect was to meet with a S [REDACTED] M [REDACTED] of Wichita Texas. The NJH Ladycats girl's basketball picture might be from Norman Junior High located in Kaufman Texas. A Google search showed that there is Wichita Falls Texas located NW of Fort Worth and a Kaufman Texas that is located just SE of Fort Worth Texas.

You'll also find nude images of this individual as well as screenshot's of the girl with the suspect's webcam image included. There are several of these images.

Please review this folder for its evidentiary value.

The suspect also had two folders that were titled, "Me" and "Me Restricted." The "Me" folder contains dozens of selfie type images of himself. The "Me Restricted" folder contains nude images of the suspect. Both of the folders show ownership of this device.

Lastly I recovered the suspect's resume that I bookmarked under the titled, "Item No. 1 Suspect's Resume."

Please see both the NetClean and FTK reports for their evidentiary value.

150910-2991

Conclusion

It is my conclusion that the suspect is in possession of child pornography as defined by NRS 200.730.

It is my conclusion also that the suspect has met up with at least two young girls who are in their teens who possibly live out of state. I recovered images of the suspect and possible victim together. I also recovered nude images of these two girls as well. The exact age is unknown but they appear to be approximately 15 years of age.

14256 3/7/16

EXHIBIT F

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EXHIBIT F

SER 0176

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

LONNY JOSEPH DITIRRO, aka,
Lonny Joseph Ditirro Jr.,

Defendant.

CASE NO: 16F06660X

DEPT NO: 2

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730 - NOC 50374), in the manner following, to-wit: That the said Defendant, on or about the 10th day of September, 2015, at and within the County of Clark, State of Nevada,

COUNT 1

did willfully, unlawfully, feloniously, and knowingly have in his possession a film, photograph, or other visual presentation depicting a child under the age of 16 years of age as the subject of a sexual portrayal or engaging in, simulating, or assisting others to engage in or simulate sexual conduct, to-wit: a SanDisk Micro SD card containing file name: 383fd68c-9ec6-4bac-bb75-c56cca0c52bc.jpg which depicts: Nude pre-pubescent female child lying on her back, with an image of a playboy bunny drawn above her vagina and the words "Fuck Me." One adult erect penis is seen above her that is dripping with ejaculation. Another adult's erect penis is penetrating her anus. The child also has a large amount of semen on her chest/stomach area.

COUNT 2

did willfully, unlawfully, feloniously, and knowingly have in his possession a film, photograph, or other visual presentation depicting a child under the age of 16 years of age as the subject of a sexual portrayal or engaging in, simulating, or assisting others to engage in or simulate sexual conduct, to-wit: a SanDisk Micro SD card containing file name:

1 x_448913e4.jpg which depicts: Nude pre-pubescent female child lying on her back, with her
2 legs spread apart. A nude adult male with an erect penis is in between her legs with his penis
3 touching said child's vaginal area.

4 COUNT 3

5 did willfully, unlawfully, feloniously, and knowingly have in his possession a film,
6 photograph, or other visual presentation depicting a child under the age of 16 years of age as
7 the subject of a sexual portrayal or engaging in, simulating, or assisting others to engage in or
8 simulate sexual conduct, to-wit: a SanDisk Micro SD card containing file name: 10859.jpg
9 which depicts: Partially nude pre-pubescent male child lying on his back. An adult woman,
10 wearing a robe and partially exposing her breasts is seen with the child's penis in her mouth as
11 she performs oral sex on said child.

12 COUNT 4

13 did willfully, unlawfully, feloniously, and knowingly have in his possession a film,
14 photograph, or other visual presentation depicting a child under the age of 16 years of age as
15 the subject of a sexual portrayal or engaging in, simulating, or assisting others to engage in or
16 simulate sexual conduct, to-wit: a SanDisk Micro SD card containing file name: 01-1.jpeg
17 which depicts: An adult male with an erect penis is seen holding his penis with his left hand
18 and ejaculating into the mouth of a pre-pubescent female child.

19 COUNT 5

20 did willfully, unlawfully, feloniously, and knowingly have in his possession a film,
21 photograph, or other visual presentation depicting a child under the age of 16 years of age as
22 the subject of a sexual portrayal or engaging in, simulating, or assisting others to engage in or
23 simulate sexual conduct, to-wit: a SanDisk Micro SD card containing file name: 050085f7-
24 5a8a-4ee8-ac7f-770f847ca105.jpg which depicts: Nude pre-pubescent female child is seen
25 in the bathtub, sitting on top of a nude adult male who is lying on his back in the bathtub. The
26 child has both hands around male's penis as male is seen ejaculating.

27 COUNT 6

28 did willfully, unlawfully, feloniously, and knowingly have in his possession a film,

1 photograph, or other visual presentation depicting a child under the age of 16 years of age as
2 the subject of a sexual portrayal or engaging in, simulating, or assisting others to engage in or
3 simulate sexual conduct, to-wit: a SanDisk Micro SD card containing file name: 3_2.jpeg
4 which depicts: Nude pre-pubescent female child is seen standing with her legs spread open
5 and her arms spread open above her head as if she is tied up. The child's mouth is covered
6 with tape. The child also has clothes pins attached to both nipples of her un-developed breasts
7 and to her vagina. This image is consistent with S&M.

8 COUNT 7

9 did willfully, unlawfully, feloniously, and knowingly have in his possession a film,
10 photograph, or other visual presentation depicting a child under the age of 16 years of age as
11 the subject of a sexual portrayal or engaging in, simulating, or assisting others to engage in or
12 simulate sexual conduct, to-wit: a SanDisk Micro SD card containing file name:
13 47654709.dthumb which depicts: A nude adult male is lying on his back with an erect penis,
14 while a nude pre-pubescent female child is performing oral sex on said male until male
15 ejaculates.

16 COUNT 8

17 did willfully, unlawfully, feloniously, and knowingly have in his possession a film,
18 photograph, or other visual presentation depicting a child under the age of 16 years of age as
19 the subject of a sexual portrayal or engaging in, simulating, or assisting others to engage in or
20 simulate sexual conduct, to-wit: a SanDisk Micro SD card containing file name: _leg-
21 lift_fk.mpg which depicts: A nude adult male is lying on his back with an erect penis; while
22 a nude pre-pubescent female child is seen straddling the adult male. The male is penetrating
23 the child's vagina with his penis as he has vaginal sex with said child.

24 COUNT 9

25 did willfully, unlawfully, feloniously, and knowingly have in his possession a film,
26 photograph, or other visual presentation depicting a child under the age of 16 years of age as
27 the subject of a sexual portrayal or engaging in, simulating, or assisting others to engage in or
28 simulate sexual conduct, to-wit: a SanDisk Micro SD card containing file name:

1 CONTENT_033 (2).3gpp which depicts: An adult male can be seen with an erect penis, as
2 he masturbates and ejaculates on a pre-pubescent female child's face and mouth.

3 COUNT 10

4 did willfully, unlawfully, feloniously, and knowingly have in his possession a film,
5 photograph, or other visual presentation depicting a child under the age of 16 years of age as
6 the subject of a sexual portrayal or engaging in, simulating, or assisting others to engage in or
7 simulate sexual conduct, to-wit: a SanDisk Micro SD card containing file name:
8 CONTENT_112.3gpp which depicts: A nude pre-pubescent female child is lying on her back,
9 as an adult male penetrates her vagina with his erect penis multiple times.

10 All of which is contrary to the form, force and effect of Statutes in such cases made and
11 provided and against the peace and dignity of the State of Nevada. Said Complainant makes
12 this declaration subject to the penalty of perjury.

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27 16F06660X/jw
28 LVMPD EV# 1509102991
(TK2)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
 (N.R.S. 171.106)
 (N.R.S. 53 amended 7/13/1993)

Event Number: 150910-2991

STATE OF NEVADA) DITIRRO, LONNY JOSEPH
) ss:
 COUNTY OF CLARK) DOB: [REDACTED] SS#: [REDACTED]

Det. S. Miller, P#6507, being first duly sworn, deposes and says:

That he is a Police Detective, assigned to the Internet Crimes against Children Task Force (ICACTF) with the Las Vegas Metropolitan Police Department, being so employed for a period of 16 years, assigned to investigate the crime(s) of POSSESSION OF CHILD PORNOGRAPHY (10 counts) committed on or about 09/10/2015, which investigation has developed DITIRRO, LONNY JOSEPH as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME, TO WIT:

On September 10, 2015, LVMPD Officers N. Bianco, P#15086 and G. Wilson, P#9177 were dispatched to the address of [REDACTED] Las Vegas, Nevada 89121 reference a child exploitation call. Upon arrival, officers made contact with the person reporting (PR), Stephan Baltazar, DOB: [REDACTED] and his wife, Tiffany Gonyea, DOB: [REDACTED]. Per Baltazar, his friend, Rachael Saito, DOB: [REDACTED], found a micro Secure Digital (SD) card in her bed. Per Saito, the SD card belongs to her ex-boyfriend, Lonny Joseph Ditirro, DOB: [REDACTED]. Baltazar described Saito put the SD card in her cell phone and discovered what appeared to be child pornographic images on the SD card. Saito, in fear Ditirro would retaliate against her if she went to the police, provided the card to Baltazar.

Officers, using Baltazar's cell phone viewed the SD card. Officers observed several images of females, who appeared to be under the age of 16, engaged in sexual acts.

Saito arrived while officers were still on scene and stated one of the females on the SD card who appears to be under 16, goes by the name of S [REDACTED] and per Ditirro's Facebook page, graduates in 2017. Per Saito, Ditirro drove to Texas to meet with S [REDACTED]. Also, Saito described seeing an image of a child who appeared to be 5 years old engaged in sexual acts with an adult male.

This report was documented under LVMPD event 150910-2991. Officer Bianco impounded the SanDisk Micro SD card under the same event.

On November 30, 2015, Detective S. Tooley, P#6224, conducted a recorded interview with Saito. Saito described her and Ditirro had begun dating in February of 2015. Shortly thereafter,

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

CONTINUATION

Event #: 150910-2991

Ditirro moved in to her apartment at [REDACTED], Las Vegas, Nevada 89121. Saito described she had discovered Ditirro had been chatting on Facebook with a 15 year old girl named S [REDACTED] M [REDACTED] from Wichita, Texas.

Saito described she and Ditirro broke up around July of 2015, but began a casual relationship in August of 2015; however, are no longer together. Saito described, in August 2015, Ditirro told her he was going to visit his mother who lives in El Paso, Texas, but Saito believes Ditirro met up with S [REDACTED] in Texas. (S [REDACTED] has not been identified at this time.)

Saito described on or about September 9, 2015, while in bed, she discovered a micro SD card stuck to her leg. Saito believed it to be Ditirro's SD card because he had asked her if she had seen the card. Saito described she placed the SD card in her phone and observed both clothed and nude pictures of Ditirro, images of Ditirro engaged in sexual acts with a child she believes is S [REDACTED]. Also, Saito located images of other children who appear to be under the age of 16 engaged in sexual acts. Specifically, Saito described an image of a female child around the age of 12 engaged in sexual intercourse with an adult male.

Based on training and experience, Affiant knows micro SD cards can store images, videos and other digital files. Affiant knows users can store files to a SD card by capturing images and videos using their cellular phone, downloading files from the internet, and transferring digital files to the SD card.

On December 2, 2015, Det. S. Tooley, P#6224, had a search warrant signed by Judge Diana Sullivan and served said warrant on same date to seize and perform a full forensic examination on said SanDisk Micro Secure Digital Card (16GB), for evidence of child pornography and proof of ownership of said SD card.

On 03/07/2016, LVMPD Forensic Examiner Matt Trafford, P#14286, completed a forensic examination on said SanDisk Micro Secure Digital Card (16GB). The results of said examination revealed 254 images and 42 videos of child pornography were found saved on said SD card. There were also 111 images that are child exploitive (age difficult) and 30 images of CGI/animation that are child exploitive. In addition, there are 235 images/videos of suspect Lonny Ditirro located on said SD card; proving said SD card belongs to him. 56 of the 254 images of child pornography were tagged as involving infants/toddlers and 5 images of the 254 being S&M (Sadomasochism)/violence related.

Affiant viewed the reported 254 images and 42 videos of child exploitation and found them all to be child pornographic in nature. The following is a description of 6 of the images and 4 of the videos:

IMAGES

File name: 383fd68c-9ec6-4bac-bb75-c56cca0c52bc.jpg

SHA1 Hash Value: 9CF25DAF2CA400E0B22479DB2177B850

Description: Nude pre-pubescent female child lying on her back, with an image of a playboy bunny drawn above her vagina and the words "Fuck Me." One adult erect penis is seen above her that is dripping with ejaculation. Another adult's erect penis is penetrating her anus. The child also has a large amount of semen on her chest/stomach area.

SER 0182

CONTINUATION

Event #: 150910-2991

File name: x_448913e4.jpg**SHA1 Hash Value:** C318491BEF15012387AB220E93CC2E30**Description:** Nude pre-pubescent female child lying on her back, with her legs spread apart. A nude adult male with an erect penis is in between her legs with his penis touching said child's vaginal area.**File name:** 10859.jpg**SHA1 Hash Value:** 1998D943A31EA7A335CFA44996AB9D06**Description:** Partially nude pre-pubescent male child lying on his back. An adult woman, wearing a robe and partially exposing her breasts is seen with the child's penis in her mouth as she performs oral sex on said child.**File name:** 01-1.jpeg**SHA1 Hash Value:** 4ADDE8053FFDE0021ACB6EF8C4A35BDB**Description:** An adult male with an erect penis is seen holding his penis with his left hand and ejaculating into the mouth of a pre-pubescent female child.**File name:** 050085f7-5a8a-4ee8-ac7f-770f847ea105.jpg**SHA1 Hash Value:** 9FD0FE3C2F4770A6D327FA4AB279FE0F**Description:** Nude pre-pubescent female child is seen in the bathtub, sitting on top of a nude adult male who is lying on his back in the bathtub. The child has both hands around male's penis as male is seen ejaculating.**File name:** 3_2.jpeg**SHA1 Hash Value:** A411E9E22D6CC2E2062A2F112B16EDFD**Description:** Nude pre-pubescent female child is seen standing with her legs spread open and her arms spread open above her head as if she is tied up. The child's mouth is covered with tape. The child also has clothes pins attached to both nipples of her un-developed breasts and to her vagina. This image is consistent with S&M.VIDEOS**File name:** 47654709.dthumb**SHA1 Hash Value:** 0AC64E4DE7E16EE80F192516D838A546**Description:** A nude adult male is lying on his back with an erect penis, while a nude pre-pubescent female child is performing oral sex on said male until male ejaculates.**File name:** -_leg-lift_fk.mpg**SHA1 Hash Value:** 1F6686B4BD2F501E2CFB95CC4C99A255**Description:** A nude adult male is lying on his back with an erect penis; while a nude pre-pubescent female child is seen straddling the adult male. The male is penetrating the child's vagina with his penis as he has vaginal sex with said child.**File name:** CONTENT_033 (2).3gpp**SHA1 Hash Value:** 86CD6BBB2625FF0C3F46FDE0D0F189BA**Description:** An adult male can be seen with an erect penis, as he masturbates and ejaculates on a pre-pubescent female child's face and mouth.

SER 0183

CLARK COUNTY METROPOLITAN POLICE DEPARTMENT

CONTINUATION

Event #: 150910-2991

File name: CONTENT_112.3gpp

SHA1 Hash Value: 6530AAB5688166F214F9A9BBCB5C3AEF

Description: A nude pre-pubescent female child is lying on her back, as an adult male penetrates her vagina with his erect penis multiple times.

Affiant viewed the 235 images/videos of suspect Lonny Ditirro located on said SD card and confirmed said images to be that of suspect Lonny Ditirro, thus providing proof of ownership of said SD card as many of the images was "selfies" taken by Lonny himself. In addition, Lonny video recorded numerous videos of having sex with probable unidentified underage girls (ages 13-15) and pictures with various young teenage girls. The suspect also had two folders that were titled, "Me" and "Me Restricted." The "Me" folder contains dozens of "selfie" type images of himself. The "Me Restricted" folder contains nude images of the suspect. Both of these folders show additional ownership of said SD card. The suspect Lonny Ditirro also had his "Resume" saved to the SD card that also provided proof of ownership.

On 04/12/2016, IS Lisa Rowe served an Administrative Subpoena on Facebook, Inc. for all customer records pertaining to user account: www.facebook.com/lonny.j.ditirro.

On 04/13/2016, Facebook, Inc. responded that user account: www.facebook.com/lonny.j.ditirro, resolves to Lonny Joseph Ditirro, IP address of 76.3.155.54, cell phone of 702-445-2725, email addresses of guardian_angel_l@hotmail.com and lonny.ditirro@gmail.com, and a profile picture that matches suspect Lonny Ditirro images found on SD card.

Upon doing a routine record check on Lonny Ditirro, he was further identified as Lonny Joseph Ditirro, DOB [REDACTED], SSN [REDACTED] Suspended Nevada Driver's License #2101646222, Height 6-4, weight 250, hair color: brown, eye color: brown. Subject has an outstanding traffic warrant out of Henderson (WA# 2822033, bail \$2,310). Subject has used numerous addresses and phone numbers in the recent past and his exact location is unknown.

All attempts to locate Lonny Ditirro have been unsuccessful.

Wherefore, Declarant prays that a Warrant of Arrest be issued for suspect DITIRRO, LONNY JOSEPH on the charge(s) of POSSESSION OF CHILD PORNOGRAPHY (10 counts).

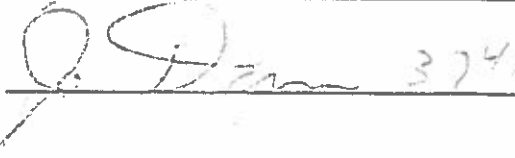
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on this 15th day of April, 2016.

DECLARANT:



WITNESS:



DATE:

04/15/16

SER 0184

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EXHIBIT G

Case: 19-10250, 09/21/2020, ID: 11830255, DktEntry: 30, Page 187 of 229

EXHIBIT G

SER 0185

Location : Justice Court Help

CASE No. 16F06660X

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Case Type: Felony
Date Filed: 05/02/2016
Location: JC Department 2

PARTY INFORMATION

Lead Attorneys
James C Gallo
Retained
702-385-3131(W)

State of Nevada

CHARGE INFORMATION

1. Poss visual porn of pers < 16, (1st) [50374]
2. Poss visual porn of pers < 16, (1st) [50374]
3. Poss visual porn of pers < 16, (1st) [50374]
4. Poss visual porn of pers < 16, (1st) [50374]
5. Poss visual porn of pers < 16, (1st) [50374]
6. Poss visual porn of pers < 16, (1st) [50374]
7. Poss visual porn of pers < 16, (1st) [50374]
8. Poss visual porn of pers < 16, (1st) [50374]
9. Poss visual porn of pers < 16, (1st) [50374]
10. Poss visual porn of pers < 16, (1st) [50374]

[illegible]

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

04/29/2016	CTRACK Track Assignment JC02
04/29/2016	CTRACK Case Modified <i>Jurisdiction/DA;</i>
05/02/2016	Criminal Complaint
05/02/2016	Filed Under Seal
05/02/2016	Request For Arrest Warrant
05/02/2016	Declaration of Warrant Summons (Affidavit)
05/04/2016	Arrest Warrant Request (7:30 AM) (Judicial Officer Sciscento, Joseph S.) Result: Signing Completed
05/04/2016	Minute Order - Department 02
05/04/2016	Arrest Warrant Ordered to be Issued <i>00/00 total bail; no bail; set in court</i>
05/04/2016	Warrant Issued
05/04/2016	Arrest Warrant Confidential
05/04/2016	Arrest Warrant - Face Sheet
05/24/2016	Motion to Place on Calendar <i>to request own recognizance release or bail</i>
05/27/2016	Motion (8:00 AM) (Judicial Officer Sciscento, Joseph S.) <i>No bail posted</i> Result: Motion Denied
05/27/2016	Minute Order - Department 02
05/27/2016	Not in custody <i>Counts: 001; 002; 003; 004; 005; 006; 007; 008; 009; 010</i>
05/27/2016	Warrant Walk - Through Granted <i>Surety Bond- 15,000/15,000 total bail with house arrest</i>
05/27/2016	Defendant to be booked on Arrest Warrant & released on Bond <i>in the amount of 15,000/15,000 total bail with house arrest</i>
05/27/2016	Bail Condition <i>to have no access to computers also to have no unsupervised individuals at the residence</i>
05/27/2016	Defendant to Report to CCDC House Arrest <i>May 31 2016 10:00AM; To be Considered for House Arrest.</i>
05/27/2016	Status Check <i>if bond posted and walk through completed</i>
05/27/2016	Initial Appearance Completed <i>Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint</i>
05/27/2016	Counsel Confirms as Attorney of Record
05/27/2016	Motion <i>denied</i>
05/27/2016	Warrant Stands
05/30/2016	Surety Bond Acceptance-Notice of Appearance

10/4/2016

<https://vjcpa.clarkcountynv.gov/Anonymous/CaseDetail.aspx?CaseID=11953702>

05/30/2016 **Surety Bond**
 05/30/2016 **Warrant Cleared**
 05/30/2016 **Temporary Custody Record**
 WALK THRU / BOND
 05/31/2016 **Warrant Service Slip**
 05/31/2016 **Waiver of Extradition After Admission to Bail**
 06/01/2016 **Status Check (7:45 AM)** (Judicial Officers Pro Tempore, Judge, Hunt, John A.)
 Surety bond posted- in custody on other charges
 06/01/2016 Reset by Court to 06/01/2016
 Result: Matter Heard
 06/01/2016 **Not in custody**
 Counts: 001; 002; 003; 004; 005; 006; 007; 008; 009; 010
 06/01/2016 **House Arrest Order Continues**
 06/01/2016 **Status Check**
 on counsel to appear and on bond
 06/01/2016 **Minute Order - Department 02**
 06/06/2016 **Status Check (8:00 AM)** (Judicial Officer Sciscento, Joseph S.)
 Surety bond & house arrest
 06/06/2016 Reset by Court to 06/06/2016
 Result: Matter Heard
 06/06/2016 **House Arrest Order Continues**
 06/06/2016 **Not in custody**
 Counts: 001; 002; 003; 004; 005; 006; 007; 008; 009; 010
 06/06/2016 **Minute Order - Department 02**
 06/22/2016 **House Arrest Report**
 07/12/2016 **Motion**
 For leave to withdraw as attorney of record.
 07/14/2016 **CANCELED Motion (8:00 AM)** (Judicial Officer Sciscento, Joseph S.)
 Vacated
 07/14/2016 **Motion (7:45 AM)** (Judicial Officer Sciscento, Joseph S.)
 Surety bond & House Arrest- In custody on other charges (Federal)
 Result: Matter Heard
 07/14/2016 **Motion to Withdraw as Counsel**
 motion continued
 07/14/2016 **Comment**
 Defendant not transported today in Federal Custody in Pahrump
 07/14/2016 **Remand - Cash or Surety**
 Counts: 001; 002; 003; 004; 005; 006; 007; 008; 009; 010 - \$0.00/\$0.00 Total Bail
 07/14/2016 **Future Court Date Vacated**
 08/23/16 at 9am
 07/14/2016 **Continued For Presence**
 Defendant's presence- preliminary hearing called off
 07/14/2016 **Surety Bond Ordered Exonerated**
 5272578993
 07/14/2016 **Minute Order - Department 02**
 07/14/2016 **Surety Bond Exonerated**
 07/20/2016 **Ex Parte Petition**
 for writ of habeas corpus ad prosequendum for federal prisoner
 07/20/2016 **Order**
 for issuance of writ of habeas corpus ad prosequendum for federal prisoner
 08/01/2016 **Writ of Habeas Corpus**
 ad prosequendum for federal prisoner.
 08/23/2016 **CANCELED Preliminary Hearing (9:00 AM)** (Judicial Officer Sciscento, Joseph S.)
 Vacated
 Surety Bond & House Arrest
 08/23/2016 **Motion (7:45 AM)** (Judicial Officer Sciscento, Joseph S.)
 In custody
 Result: Matter Heard
 08/23/2016 **Comment**
 Per Clark County Detention Center, Defendant was not transported today Writ to produce inmate not received
 08/23/2016 **Motion to Withdraw as Counsel**
 motion continued
 08/23/2016 **Bail Stands - Cash or Surety**
 Counts: 001; 002; 003; 004; 005; 006; 007; 008; 009; 010 - \$0.00/\$0.00 Total Bail
 08/23/2016 **Minute Order - Department 02**
 11/22/2016 **Motion (7:45 AM)** (Judicial Officer Sciscento, Joseph S.)
 In custody

FINANCIAL INFORMATION

Defendant DITIRRO, LONNY JOSEPH	50.00
Total Financial Assessment	50.00
Total Payments and Credits	0.00
Balance Due as of 10/04/2016	50.00
05/30/2016 Transaction Assessment	(50.00)
05/30/2016 Payment (Window)	
Receipt # PT-2016-06257	
Express Bail Bonds	

EXHIBIT H

Redacted by FPD for
personal identifiers

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EXHIBIT H

Redacted by FPD for
personal identifiers

SER 0188



SEALED

1 DANIEL G. BOGDEN
 United States Attorney
 2 CRISTINA D. SILVA
 Assistant United States Attorney
 3 Nevada Bar No.: 13760
 501 Las Vegas Blvd. South, Ste. 1100
 4 Las Vegas, Nevada 89101
 (702) 388-6336 (phone)
 5 (702) 388-5087 (fax)
Cristina.Silva@usdoj.gov
 6 Attorneys for the United States

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U.S. DISTRICT COURT

LAS VEGAS, NEVADA

7 **UNITED STATES DISTRICT COURT**
 8 **DISTRICT OF NEVADA**

9 IN THE MATTER OF THE SEARCH OF:
 10

Magistrate No. 2:16-mj-442-CWH

11  DRIVE
 12 CITY OF LAS VEGAS
 COUNTY OF CLARK
 13 STATE OF NEVADA

AFFIDAVIT IN SUPPORT OF
 AN APPLICATION FOR A SEARCH
 WARRANT

(Under Seal)

14
 15 I, Scott Miller, being first duly sworn, state the following:

16 1. I am currently a Detective assigned to the Homicide & Sex Crimes Bureau, Internet
 17 Crimes Against Children Task Force and have been employed with the Las Vegas Metropolitan
 18 Department (LVMPD) since October 1999. I am cross-deputized as a Special Deputy United States
 19 Marshal with the Federal Bureau of Investigation (FBI), assigned to the Internet Crimes Against
 20 Children (ICAC) Task Force. Among my duties on the ICAC Task force is to conduct
 21 investigations pursuant to the FBI Innocent Images National Initiative (IINI), which focuses on
 22 crimes where computers and the Internet are used in the sexual exploitation of children. In
 23 conducting such investigations, I have gained firsthand knowledge and experience through IINI
 24 training, other Special Agents and Child Exploitation Task Force Officers. I have received basic,

1 advanced and on the job training in the investigation of cases involving the sexual exploitation of
2 children.

3 2. I have conducted, participated in, and/or consulted in several hundred sexual related
4 crimes, including investigations of individuals and locations suspected of the sexual exploitation of
5 children and have participated in the execution of numerous search warrants which have resulted in
6 the seizure of multiple items of child pornography and various items of evidence consisting of child
7 sexual exploitation and abuse.

8 3. I have received specialized training in the realm of sex crimes and sexually motivated
9 crimes from the LVMPD, Public Agency Training Council, United States Department of Justice
10 Office of Juvenile Justice, ICAC Program, and National Children's Advocacy Center. I continue to
11 stay abreast of investigative subject matters related to sexually motivated crimes by participating in
12 and reading professional papers and articles written on related subject matters by industry
13 professionals.

14 4. I am submitting this Affidavit under Rule 41 of the Federal Rules of Criminal
15 Procedure in support of an Application for a Search Warrant authorizing a search of the residence
16 [REDACTED], in Las Vegas, more specifically described in Attachment A.
17 and incorporated by reference herein. This affidavit is submitted in support of a warrant to search
18 the house, including any computer and computer media located therein, where the instrumentalities,
19 fruits, and evidence of violations of Title 18, United States Code, Sections 2251, 2252, and 2252A,
20 as specified further in Attachment B, incorporated by reference herein, might be found.

21 5. The purpose of this application is to seize evidence, more particularly described in
22 Attachment B, of violations of 18 U.S.C. § 2251(d)(1)(A), which makes it a crime to advertise child
23 pornography; 18 U.S.C. §§ 2252(a)(1) and 2252A(a)(1), which make it a crime to transport or ship
24 in interstate or foreign commerce, by computer, child pornography; 18 U.S.C. §§ 2252(a)(4)(B) and

1 2252A(a)(5)(B), which make it a crime to possess child pornography; and violations of 18 U.S.C. §§
2 2252(a)(2) and 2252A(a)(2), which make it a crime to receive and distribute child pornography.

3 6. This affidavit is submitted in support of an application for a search warrant for
4 contraband, evidence, fruits and instrumentalities of criminal violations relating to child sexual
5 exploitation and travel with intent to engage in illicit sexual conduct in violation of 18 U.S.C. §§
6 2251(a) and 2423(b). As set forth below, I have probable cause to believe that such items, as set
7 forth in Attachment B, which is attached and incorporated by this reference, are currently on the
8 residence located at [REDACTED] Las Vegas, Nevada 89169
9 (hereinafter the "SUBJECT PREMISES") more fully described in Attachment A, which is also
10 attached and incorporated by this reference.

11 7. The facts set forth in this affidavit are based on the following: my own personal
12 knowledge; knowledge obtained from other individuals during my participation in this investigation,
13 including other law enforcement officers; my review of records related to this investigation;
14 communications with others who have knowledge of the events and circumstances described herein;
15 and information gained through my training and experience. Because this affidavit is submitted for
16 the limited purpose of establishing probable cause in support of an application for a search warrant,
17 it does not set forth each and every fact that I or others have learned during the course of this
18 investigation.

19 **PERTINENT FEDERAL CRIMINAL STATUTES**

20 8. This investigation concerns alleged violations of 18 U.S.C. §§ 2251, 2252 and
21 2252A, relating to material involving the sexual exploitation of minors.

22 9. 18 U.S.C. § 2251(d)(1)(A) prohibits a person from knowingly making and
23 publishing, or causing to be made and published, any notice offering to exchange, display, distribute,
24 and reproduce any visual depiction of child pornography.

12. 18 U.S.C. § 2252(a)(4) prohibits a person from possessing one or more books, magazines, periodicals, films, or other materials which contain visual depictions of minors engaged in sexually explicit conduct that have been transported in interstate or foreign commerce, or that were produced using materials that have traveled in interstate or foreign commerce. 18 U.S.C. § 2252A(a)(5)(B) prohibits a person from knowingly possessing any book, magazine, periodical, film, videotape, computer disk, or other material that contains an image of child pornography that has been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer.

13. The following non-exhaustive list of definitions applies to this Affidavit and Attachments A and B to this Affidavit:

1 a. "Child erotica," as used herein, means any material relating to minors that
2 serves a sexual purpose for a given individual, including fantasy writings, letters, diaries, books,
3 sexual aids, souvenirs, toys, costumes, drawings, and images or videos of minors that are not
4 sexually explicit. Some of the more common types of child erotica include photographs that are not
5 sexually explicit, drawings, sketches, fantasy writing, and diaries. *See* Kenneth V. Lanning, *Child*
6 *Molesters: A Behavioral Analysis* (2001) at 65. Federal courts have recognized the evidentiary
7 value of child erotica and its admissibility in child pornography cases. *See United States v. Cross*,
8 928 F.2d 1030 (11th Cir. 1991) (testimony about persons deriving sexual satisfaction from and
9 collecting non-sexual photographs of children admissible to show intent and explain actions of
10 defendant); *United States v. Caldwell*, 181 F.3d 104 (6th Cir. 1999) (child erotica admissible under
11 Federal Rule of Evidence 404(b) to show knowledge or intent).

12 b. "Child pornography," as used herein, is defined in 18 U.S.C. § 2256 (any
13 visual depiction of sexually explicit conduct where (a) the production of the visual depiction
14 involved the use of a minor engaged in sexually explicit conduct, (b) the visual depiction is a digital
15 image, computer image, or computer-generated image that is, or is indistinguishable from, that of a
16 minor engaged in sexually explicit conduct, or (c) the visual depiction has been created, adapted, or
17 modified to appear that an identifiable minor is engaged in sexually explicit conduct).

18 c. "Computer," as used herein, is defined pursuant to 18 U.S.C. § 1030(e)(1) as
19 "an electronic, magnetic, optical, electrochemical, or other high speed data processing device
20 performing logical or storage functions, and includes any data storage facility or communications
21 facility directly related to or operating in conjunction with such device."

22 d. "Computer Server" or "Server," as used herein, is a computer that is attached
23 to a dedicated network and serves many users. A web server, for example, is a computer which
24

1 hosts the data associated with a website. That web server receives requests from a user and delivers
2 information from the server to the user's computer via the Internet.

3 e. "Computer hardware," as used herein, consists of all equipment which can
4 receive, capture, collect, analyze, create, display, convert, store, conceal, or transmit electronic,
5 magnetic, or similar computer impulses or data. Computer hardware includes any data-processing
6 devices (including, but not limited to, mobile telephones, video gaming devices, portable electronic
7 music players, central processing units, internal and peripheral storage devices such as fixed disks,
8 external hard drives, floppy disk drives and diskettes, and other memory storage devices); peripheral
9 input/output devices (including, but not limited to, keyboards, printers, video display monitors, and
10 related communications devices such as cables and connections), as well as any devices,
11 mechanisms, or parts that can be used to restrict access to computer hardware (including, but not
12 limited to, physical keys and locks).

13 f. "Computer software," as used herein, is digital information which can be
14 interpreted by a computer and any of its related components to direct the way they work. Computer
15 software is stored in electronic, magnetic, or other digital form. It commonly includes programs to
16 run operating systems, applications, and utilities.

17 g. "Computer-related documentation," as used herein, consists of written,
18 recorded, printed, or electronically stored material which explains or illustrates how to configure or
19 use computer hardware, computer software, or other related items.

20 h. "Computer passwords, pass-phrases and data security devices," as used
21 herein, consist of information or items designed to restrict access to or hide computer software,
22 documentation, or data. Data security devices may consist of hardware, software, or other
23 programming code. A password or pass-phrase (a string of alpha-numeric characters) usually
24 operates as a sort of digital key to "unlock" particular data security devices. Data security hardware

1 may include encryption devices, chips, and circuit boards. Data security software of digital code
2 may include programming code that creates "test" keys or "hot" keys, which perform certain pre-set
3 security functions when touched. Data security software or code may also encrypt, compress, hide,
4 or "booby-trap" protected data to make it inaccessible or unusable, as well as reverse the progress to
5 restore it.

6 i. "Digital device" includes any electronic system or device capable of storing
7 and/or processing data in digital form, including: central-processing units; desktop computers; laptop
8 or notebook computers; personal digital assistants; wireless communication devices such as
9 telephone paging devices, beepers, and mobile telephones; peripheral input/output devices such as
10 keyboards, printers, scanners, plotters, monitors, and drives intended for removable media; related
11 communications devices such as modems, cables, and connections; storage media such as hard disk
12 drives, floppy disks, compact disks, magnetic tapes, and memory chips; and security devices.

13 j. "Hyperlink" refers to an item on a web page which, when selected, transfers
14 the user directly to another location in a hypertext document or to some other web page.

15 k. The Internet is a global network of computers and other electronic devices
16 that communicate with each other. Due to the structure of the Internet, connections between devices
17 on the Internet often cross state and international borders, even when the devices communicating
18 with each other are in the same state.

19 l. "Internet Service Providers" (ISPs), as used herein, are commercial
20 organizations that are in business to provide individuals and businesses access to the Internet. ISPs
21 provide a range of functions for their customers including access to the Internet, web hosting, e-mail,
22 remote storage, and co-location of computers and other communications equipment. ISPs can offer
23 a range of options in providing access to the Internet including telephone based dial-up, broadband
24 based access via digital subscriber line (DSL) or cable television, dedicated circuits, or satellite

1 based subscription. ISPs typically charge a fee based upon the type of connection and volume of
2 data, called bandwidth, which the connection supports. Many ISPs assign each subscriber an
3 account name – a user name or screen name, an "e-mail address," an e-mail mailbox, and a personal
4 password selected by the subscriber. By using a computer equipped with a modem, the subscriber
5 can establish communication with an ISP over a telephone line, through a cable system or via
6 satellite, and can access the Internet by using his or her account name and personal password.

7 m. "ISP Records" are records maintained by ISPs pertaining to their subscribers
8 (regardless of whether those subscribers are individuals or entities). These records may include
9 account application information, subscriber and billing information, account access information
10 (often in the form of log files), e-mail communications, information concerning content uploaded
11 and/or stored on or via the ISP's servers, and other information, which may be stored both in
12 computer data format and in written or printed record format. ISPs reserve and/or maintain
13 computer disk storage space on their computer system for their subscribers' use. This service by
14 ISPs allows for both temporary and long-term storage of electronic communications and many other
15 types of electronic data and files.

16 n. "Internet Protocol address" or "IP address" refers to a unique number used by
17 a computer to access the Internet. IP addresses can be dynamic, meaning that the Internet Service
18 Provider (ISP) assigns a different unique number to a computer every time it accesses the Internet.
19 IP addresses might also be static, if an ISP assigns a user's computer a particular IP address which is
20 used each time the computer accesses the Internet. IP addresses are also used by computer servers,
21 including web servers, to communicate with other computers.

22 o. "Minor" means any person under the age of eighteen years. See 18 U.S.C. §
23 2256(1).
24

1 p. "Preview image" refers to an image or a set of images that is a representative
2 sample of a larger collection of images or video(s). Preview images are commonly used to advertise
3 the content of materials that are available at another internet location.

4 q. The terms "records," "documents," and "materials," as used herein, include all
5 information recorded in any form, visual or aural, and by any means, whether in handmade form
6 (including, but not limited to, writings, drawings, painting), photographic form (including, but not
7 limited to, microfilm, microfiche, prints, slides, negatives, videotapes, motion pictures,
8 photocopies), mechanical form (including, but not limited to, phonograph records, printing, typing)
9 or electrical, electronic or magnetic form (including, but not limited to, tape recordings, cassettes,
10 compact discs, electronic or magnetic storage devices such as floppy diskettes, hard disks, CD-
11 ROMs, digital video disks (DVDs), Personal Digital Assistants (PDAs), Multi Media Cards
12 (MMCs), memory sticks, optical disks, printer buffers, smart cards, memory calculators, electronic
13 dialers, Bernoulli drives, or electronic notebooks, as well as digital data files and printouts or
14 readouts from any magnetic, electrical or electronic storage device).

15 r. A "social networking service" is an online service, platform, or site that
16 focuses on facilitating the building of social networks or social relations among people who, for
17 example, share interests, activities, backgrounds, or real-life connections. A social network service
18 consists of a representation of each user (often a profile), his/her social links, and a variety of
19 additional services, which may include the ability to create public and private groups or networks, as
20 well as image and video sharing. Most social network services are web-based and provide means
21 for users to interact over the Internet, such as e-mail, instant messaging, or bulletin-board postings.
22 Social networking sites allow users to share ideas, activities, events, and interests within their
23 individual networks. Examples of widely used social networking services include Facebook,
24 Google+, and Twitter.

1 s. "Sexually explicit conduct" means actual or simulated (a) sexual intercourse.
2 including genital-genital, oral-genital, or oral-anal, whether between persons of the same or opposite
3 sex; (b) bestiality; (c) masturbation; (d) sadistic or masochistic abuse; or (e) lascivious exhibition of
4 the genitals or pubic area of any person. See 18 U.S.C. § 2256(2).

5 t. "Visual depictions" include undeveloped film and videotape, and data stored
6 on computer disk or by electronic means, which is capable of conversion into a visual image. See 18
7 U.S.C. § 2256(5).

8 u. "Website" consists of textual pages of information and associated graphic
9 images. The textual information is stored in a specific format known as Hyper-Text Mark-up
10 Language (HTML) and is transmitted from web servers to various web clients via Hyper-Text
11 Transport Protocol (HTTP).

12 v. "Imaging" or "copying" refers to an accurate reproduction of information
13 contained on an original physical item, independent of the electronic storage device. "Imaging" or
14 "copying" maintains contents but attributes may change during the reproduction.

15 w. "Hash value," or "SHA-1," refers to a mathematical algorithm generated
16 against data to produce a numeric value that is representative of that data. A hash value may be run
17 on media to find the precise data from which the value was generated. Hash values cannot be used
18 to find other data. Secure Hash Algorithm Version 1, or SHA 1, is a mathematical algorithm. SHA 1
19 was developed by the National Institute of Standards and Technology (NIST), along with the
20 National Security Agency (NSA). The United States of America has adopted the SHA 1 hash
21 algorithm described herein as a Federal Information Processing Standard. It is computationally
22 infeasible (2^{160}) to find two different files that produce the same SHA 1 value. This allows
23 investigators to identify a file by the value, regardless of the name of the file beyond 99.99 percent
24 certainty. The SHA 1 digital signature can be explained as a digital fingerprint, or DNA of the file.

1 x. “Steganography” refers to the art and science of communicating in a way that
2 hides the existence of the communication. It is used to hide a file inside another. For example,
3 steganography can be used to hide a child pornography image inside another graphic image file,
4 audio file, or other file format.

5 y. “Compressed file” refers to a file that has been reduced in size through a
6 compression algorithm to save disk space. The act of compressing a file will make it unreadable to
7 most programs until the file is uncompressed.

8
9 BACKGROUND ON COMPUTERS AND CHILD PORNOGRAPHY
10 AND ONLINE CHILD EXPLOITATION

11 14. Based upon my training and experience, I am aware that the following characteristics
12 are generally found in varying combinations in people who produce, trade, distribute, or possess
13 images of child pornography:

14 a. They view children as sexual objects. They receive gratification from
15 sexually explicit images of minors.

16 b. They collect sexually explicit images of minors which they use for their own
17 sexual gratification and fantasy.

18 c. Although in the past they rarely, if ever, dispose of sexually explicit images of
19 minors because the images are treated as prized possessions, it is becoming more common for them
20 to download, view and erase the images. They have been known to store such images in different
21 formats including photos, printouts, magazines, videotapes, and forms of digital media such as hard
22 drives, diskettes, and CD-ROMs. They have been known to store such images in different places
23 including their home, their car, and other areas under their control.

24 d. They use sexually explicit images of minors as a means of reliving fantasies
or actual sexual encounters. They also use the images as keepsakes and as a means of gaining

1 acceptance, status, trust, and psychological support by exchanging, trading, or selling the images to
2 other people with similar interests.

3 e. They go to great lengths to conceal and protect from discovery their collection
4 of sexually explicit images of minors. They may have passwords to access programs or control
5 encryption written down either in the vicinity of their computer, or on their person, for instance, in
6 their wallet or an address book.

7 f. They maintain images of minors with whom they have had sexual contact. If
8 a picture of a minor is taken by such a person depicting the minor in the nude, there is a high
9 probability the minor was used to produce sexually explicit images to be traded with people with
10 similar interests.

11 15. Computers and computer technology have revolutionized the way in which
12 individuals interested in child pornography interact with each other. Child pornography formerly
13 was produced using cameras and film (either still photography or movies). The photographs
14 required darkroom facilities and a significant amount of skill in order to develop and reproduce the
15 images. There were definable costs involved with the production of pornographic images. To
16 distribute these on any scale required significant resources. The photographs themselves were
17 somewhat bulky and required secure storage to prevent their exposure to the public. The distribution
18 of these wares was accomplished through a combination of personal contacts, mailings and
19 telephone calls.

20 16. The development of computers has changed this. Computers basically serve four
21 functions in connection with child pornography: production, communication, distribution, and
22 storage.

23 17. Child pornographers can now transfer photographs from a camera onto a computer-
24 readable format with a variety of devices, including scanners, memory-card readers, or directly from

1 digital cameras. Modems allow computers to connect to other computers through the use of
2 telephone, cable, or wireless connections. Electronic contact can be made to literally millions of
3 computers around the world.

4 18. The capability of a computer to store images in digital form makes the computer itself
5 an ideal repository for child pornography. The storage capacity of electronic media used in home
6 computers has increased tremendously within the last several years. These drives can store an
7 extremely large amount of visual images at very high resolution.

8 19. The Internet, the World Wide Web, and other Internet components afford individuals
9 many different and relatively secure and anonymous venues for obtaining, viewing, and trading
10 child pornography, for communicating with others to do so, or for enticing children.

11 20. Collectors and distributors of child pornography also use online resources to retrieve,
12 store and share child pornography, including services offered by Internet Portals such as Google,
13 America Online (AOL), Yahoo!, Hotmail, and Facebook among others. Online services allow a user
14 to set up an account providing e-mail and instant-messaging services, as well as electronic storage of
15 computer files in any variety of formats. A user can set up an online storage account from any
16 computer with access to the Internet. Evidence of such online storage of child pornography is often
17 found on the user's computer. And even in cases where online storage is used, evidence of child
18 pornography can be found on the user's computer in most cases.

19 21. As is the case with most digital technology, computer communications can be saved
20 or stored on hardware, and computer storage media are used for these purposes. Storing this
21 information can be intentional, i.e., by saving an e-mail as a file on the computer or saving the
22 location of one's favorite websites in, for example, "bookmarked" files. However, digital
23 information can also be retained unintentionally, e.g., traces of the path of an electronic
24 communication may be automatically stored in many places (e.g., temporary files or ISP client

1 software, among others). In addition to electronic communications, a computer user's Internet
2 activities generally leave traces or "footprints" in the web cache and history files of the browser
3 used. A forensic examiner often can recover evidence suggesting whether a computer contains peer
4 to peer software, when the computer was sharing files, and some of the files which were uploaded or
5 downloaded. Such information is often maintained for long periods of time until overwritten by
6 other data.

7 22. The interaction between software applications and the computer operating systems
8 often results in material obtained from the Internet being stored multiple times, and even in different
9 locations, on a computer hard drive without the user's knowledge. Even if the computer user is
10 sophisticated and understands this automatic storage of information on his computer's hard drive,
11 attempts at deleting the material often fail because the material may be automatically stored multiple
12 times and in multiple locations within the computer media. As a result, digital data that may have
13 evidentiary value to this investigation could exist in the user's computer media, despite, and long
14 after, attempts at deleting it. A thorough search of this media could uncover evidence of receipt,
15 distribution, and possession of child pornography.

16 23. Data that exists on a computer is particularly resilient to deletion. Computer files or
17 remnants of such files can be recovered months or even years after they have been downloaded onto
18 a hard drive, deleted, or viewed via the Internet. Electronic files downloaded to a hard drive can be
19 stored for years at little to no cost. Even when such files have been deleted, they can be recovered
20 months or years later using readily-available forensic tools. When a person "deletes" a file on a
21 home computer, the file is sent to the recycle bin, where it can be easily accessed by the user. Even
22 when a person deletes a file from the recycle bin, the data contained in the file does not actually
23 disappear; rather, that data remains on the hard drive until it is overwritten by new data. Therefore,
24 deleted files, or remnants of deleted files, may reside in free space or slack space – that is, in space

1 on the hard drive that is not allocated to an active file or that is unused after a file has been allocated
2 to a set block of storage space – for long periods of time before they are overwritten. In addition, a
3 computer's operating system may also keep a record of deleted data in a "swap" or "recovery" file.
4 Similarly, files that have been viewed via the Internet are automatically downloaded into a
5 temporary Internet directory or cache. The browser typically maintains a fixed amount of hard drive
6 space devoted to these files, and the files are only overwritten as they are replaced with more
7 recently viewed Internet pages. Thus, the ability to retrieve residues of an electronic file from a hard
8 drive depends less on when the file was downloaded or viewed than on a particular user's operating
9 system, storage capacity, and computer habits.

10 SPECIFICS OF SEARCHES AND SEIZURES OF COMPUTER SYSTEMS

11 24. Searches and seizures of evidence from computers commonly require agents to
12 download or copy information from the computers and their components, or seize most or all
13 computer items (computer hardware, computer software, and computer related documentation) to be
14 processed later by a qualified computer expert in a laboratory or other controlled environment. This
15 is almost always true because of the following:

16 a. Computer storage devices (like hard disks, diskettes, tapes, laser disks,
17 magneto opticals, and others) can store the equivalent of thousands of pages of information.
18 Especially when the user wants to conceal criminal evidence, he or she often stores it in random
19 order with deceptive file names. This requires searching authorities to examine all the stored data to
20 determine whether it is included in the warrant. This sorting process can take days or weeks,
21 depending on the volume of data stored, and it would be generally impossible to accomplish this
22 kind of data search on site; and

23 b. Searching computer systems for criminal evidence is a highly technical
24 process requiring expert skill and a properly controlled environment. The vast array of computer

1 hardware and software available requires even computer experts to specialize in some systems and
2 applications, so it is difficult to know before a search which expert should analyze the system and its
3 data. The search of a computer system is an exacting scientific procedure which is designed to
4 protect the integrity of the evidence and to recover even hidden, erased, compressed, password-
5 protected, or encrypted files. Since computer evidence is extremely vulnerable to tampering or
6 destruction (which may be caused by malicious code or normal activities of an operating system),
7 the controlled environment of a laboratory is essential to its complete and accurate analysis.

8 25. In order to fully retrieve data from a computer system, the analyst needs all magnetic
9 storage devices as well as the central processing unit (CPU). In cases involving child pornography
10 where the evidence consists partly of graphics files, the monitor(s) may be essential for a thorough
11 and efficient search due to software and hardware configuration issues. In addition, the analyst
12 needs all the system software (operating systems or interfaces, and hardware drivers) and any
13 applications software which may have been used to create the data (whether stored on hard drives or
14 on external media).

15 26. In addition, there is probable cause to believe that the computer and its storage
16 devices, the monitor, keyboard, and modem are all instrumentalities of the crime(s), within the
17 meaning of 18 U.S.C. §§ 2251 through 2256, and should all be seized as such.

18 SEARCH METHODOLOGY TO BE EMPLOYED

19 27. The search procedure of electronic data contained in computer hardware, computer
20 software, and/or memory storage devices may include the following techniques (the following is a
21 non-exclusive list, as other search procedures may be used):

22 a. examination of all of the data contained in such computer hardware, computer
23 software, and/or memory storage devices to view the data and determine whether that data falls
24 within the items to be seized as set forth herein:

b. searching for and attempting to recover any deleted, hidden, or encrypted data to determine whether that data falls within the list of items to be seized as set forth herein (any data that is encrypted and unreadable will not be returned unless law enforcement personnel have determined that the data is not (1) an instrumentality of the offenses, (2) a fruit of the criminal activity, (3) contraband, (4) otherwise unlawfully possessed, or (5) evidence of the offenses specified above);

c. surveying various file directories and the individual files they contain;

d. opening files in order to determine their contents;

e. using hash values to narrow the scope of what may be found. Hash values are used to find previously identified files of images of child pornography and do not capture images that are the result of new production, images embedded in an alternative file format, or images altered, for instance, by a single pixel. Thus, hash value results are under-inclusive, but are still a helpful tool;

f. scanning storage areas;

g. performing key word searches through all electronic storage areas to determine whether occurrences of language contained in such storage areas exist that are likely to appear in the evidence described in Attachment A; and/or

h. performing any other data analysis technique that may be necessary to locate and retrieve the evidence described in Attachment B.

DETAILS OF THE INVESTIGATION

28. The Internet Crimes Against Children (ICAC) Task Force is currently investigating LONNY DITIRRO, his apparent sexual exploitation of children and his interstate travel with intent to engage or watch illicit sexual conduct with minors. As discussed more fully below, an investigation thus far has demonstrated that there is probable cause to believe that LONNY

1 DITIRRO traveled from Las Vegas, Nevada to Wichita, Texas, for the purposes of meeting minor
2 children, and then engage in sexually explicit conduct with minors. There is also probable cause to
3 believe that LONNY DITIRRO was present during the elicited conduct and was aware that the elicited
4 conduct was being videotaped. Accordingly, this affidavit is made in support of an application for a
5 warrant to search the SUBJECT PREMISES and seize contraband, instrumentalities, fruits, and
6 evidence of criminal violations relating to the sexual exploitation of children and travel with intent
7 to engage in illicit sexual conduct.

8 29. On September 10, 2015, Las Vegas Metropolitan Police Department (LVMPD)
9 Officers N. Bianco, P#15086 and G. Wilson, P#9177 were dispatched to the address of [REDACTED]
10 [REDACTED] Las Vegas, Nevada 89121 reference a child exploitation call. Upon arrival, officers made
11 contact with the person reporting (PR), Stephan Baltazar (DOB: [REDACTED]) and his wife, Tiffany
12 Gonyea (DOB: [REDACTED]). Per Baltazar, his friend, Rachael Saito (DOB: [REDACTED]), found a
13 micro Secure Digital (SD) card in her bed. Per Saito, the SD card belongs to her ex-boyfriend,
14 Lonny Joseph Ditirro (DOB: [REDACTED]). Baltazar described Saito put the SD card in her cell phone
15 and discovered what appeared to be child pornographic images on the SD card. Saito, in fear
16 LONNY DITIRRO would retaliate against her if she went to the police, provided the card to
17 Baltazar.

18 30. Officers N. Bianco, P#15086 and G. Wilson, P#9177, using Baltazar's cell phone
19 viewed the micro secure digital SD card. Officers observed several images of females, who appeared
20 to be under the age of 16, engaged in sexual acts.

21 31. Rachael Saito arrived while officers were still on scene and stated one of the females
22 on the SD card who appears to be under 16, goes by the name of "S [REDACTED]" and per LONNY
23 DITIRRO's Facebook page, "S [REDACTED]" graduates from high school in 2017. Per Rachael Saito,
24 LONNY DITIRRO drove to Wichita, Texas (unknown exact location) to meet with S [REDACTED]. Also,

1 Rachael Saito described seeing an image of a child who appeared to be 5 years old engaged in sexual
2 acts with an adult male.

3 32. This report was documented under LVMPD event number 150910-2991. Officer
4 Bianco impounded the SanDisk Micro SD card under the same event number.

5 33. On November 30, 2015, Detective S. Tooley, P#6224, formerly of the Internet
6 Crimes Against Children Task Force, conducted a recorded interview with Rachael Saito. Rachael
7 Saito described her and LONNY DITIRRO had begun dating in February of 2015. Shortly
8 thereafter, LONNY DITIRRO moved in to her apartment at [REDACTED],
9 [REDACTED]. Rachael Saito described she had discovered LONNY DITIRRO had been
10 chatting on Facebook with a 15 year old girl, identified herein as "S.M." from Wichita, Texas.

11 34. Rachael Saito described she and LONNY DITIRRO broke up around July of 2015,
12 but began a casual relationship in August of 2015; however, they are no longer together. Rachael
13 Saito described, in August 2015, LONNY DITIRRO told her he was going to visit his mother who
14 lives in El Paso, Texas, but Rachael Saito believes LONNY DITIRRO met up with S.M. in Texas.
15 (S.M. has not been identified at this time.)

16 35. Rachael Saito described on or about September 9, 2015, while in bed, she discovered
17 a micro SD card stuck to her leg. Rachael Saito believed it to be LONNY DITIRRO's SD card
18 because he had asked her if she had seen the card. Rachael Saito described that she placed the SD
19 card in her phone and observed both clothed and nude pictures of LONNY DITIRRO, and images of
20 LONNY DITIRRO engaged in sexual acts with a child she believes is S.M. Also, Rachael Saito
21 located images of other children who appear to be under the age of 16 engaged in sexual acts.
22 Specifically, Rachael Saito described an image of a female child around the age of 12 engaged in
23 sexual intercourse with an adult male.

36. On December 2, 2015, Det. Shannon Tooley, P#6224, had a search warrant signed by State of Nevada Justice Court Judge Diana Sullivan and served said warrant on same date to seize and perform a full forensic examination on said SanDisk Micro Secure Digital Card (16GB), for evidence of child pornography and proof of ownership of said SD card.

37. On March 7, 2016, LVMPD Forensic Examiner Matt Trafford, P#14286, completed a forensic examination on said SanDisk Micro Secure Digital Card (16GB). The results of said examination revealed 254 images and 42 videos of child pornography were found saved on said SD card. There were also 111 images that are child exploitive (age difficult) and 30 images of CGI/animation that are child exploitive. In addition, there are 235 images/videos of suspect LONNY DIIIRRO located on said SD card; proving said SD card belongs to him. 56 of the 254 images of child pornography were tagged as involving infants/toddlers and 5 images of the 254 being S&M (Sadomasochism)/violence related.

38. I personally viewed the reported 254 images and 42 videos of child exploitation and found them all to be child pornographic in nature. The following is a description of 6 of the images and 4 of the videos:

- a. **File name:** 01-1.jpeg
SHA1 Hash Value: 4ADDE8053FFDE0021ACB6EF8C4A35BDB
Description: An adult male with an erect penis is seen holding his penis with his left hand and ejaculating into the mouth of a pre-pubescent female child.
This image was put on the SD card on 07/11/2014, but no EXIF data as far as when actual image created.
- b. **File name:** 050085f7-5a8a-4ee8-ac7f-770f847ea105.jpg
SHA1 Hash Value: 9FD0FF3C2F4770A6D327FA4AB279FF0F
Description: Nude pre-pubescent female child is seen in the bathtub, sitting on top of a nude adult male who is lying on his back in the bathtub. The child has both hands around male's penis as male is seen ejaculating.
This image was put on the SD card on 07/11/2014, but no EXIF data as far as when actual image created.

- c. **File name:** 3_2.jpeg
SHA1 Hash Value: A411E9E22D6CC2E2062A2F112B16EDFD
Description: Nude pre-pubescent female child is seen standing with her legs spread open and her arms spread open above her head as if she is tied up. The child's mouth is covered with tape. The child also has clothes pins attached to both nipples of her un-developed breasts and to her vagina. This image is consistent with S&M.
- This image was put on the SD card on 07/11/2014. EXIF data shows image was created on 2001-12-28 at 10:51:19, with an Olympus Digital Camera.**
- d. **File name:** _leg-lift_fk.mpg
SHA1 Hash Value: 1F6686B4BD2F501E2CFB95CC4C99A255
Description: A nude adult male is lying on his back with an erect penis; while a nude pre-pubescent female child is seen straddling the adult male. The male is penetrating the child's vagina with his penis as he has vaginal sex with said child.
- This video was put on the SD card on 07/11/2014, but no EXIF data as far as when actual video created.**
- e. **File name:** CONTENT_033 (2).3gpp
SHA1 Hash Value: 86CD6BBB2625FF0C3F46FDE0D0F189BA
Description: An adult male can be seen with an erect penis, as he masturbates and ejaculates on a pre-pubescent female child's face and mouth.
- This video was put on the SD card on 07/11/2014, but no EXIF data as far as when actual video created.**
- f. **File name:** CONTENT_112.3gpp
SHA1 Hash Value: 6530AAB5688166F214F9A9BBCB5C3AEF
Description: A nude pre-pubescent female child is lying on her back, as an adult male penetrates her vagina with his erect penis multiple times.
- This video was put on the SD card on 07/11/2014, but no EXIF data as far as when actual video created.**
- g. **File name:** 47654709.dthumb
SHA1 Hash Value: 0AC64E4DE7F16EE80F192516D838A546
Description: A nude adult male is lying on his back with an erect penis, while a nude pre-pubescent female child is performing oral sex on said male until male ejaculates.
- This video was put on the SD card on 12/09/2014, but no EXIF data as far as when actual video created.**
- h. **File name:** 383fd68c-9ec6-4bac-bb75-c56cca0c52bc.jpg
SHA1 Hash Value: 9CF25DAF2CA400E0B22479DB2177B850

Description: Nude pre-pubescent female child lying on her back, with an image of a playboy bunny drawn above her vagina and the words "Fuck Me." One adult erect penis is seen above her that is dripping with ejaculation. Another adult's erect penis is penetrating her anus. The child also has a large amount of semen on her chest/stomach area.

This image was put on the SD card on 12/28/2014, but no EXIF data as far as when actual image created.

- i. **File name:** x_448913e4.jpg
SHA1 Hash Value: C318491BEF15012387AB220E93CC2E30
Description: Nude pre-pubescent female child lying on her back, with her legs spread apart. A nude adult male with an erect penis is in between her legs with his penis touching said child's vaginal area.

This image was put on the SD card on 08/18/2015, but no EXIF data as far as when actual image created.

- j. **File name:** 10859.jpg
SHA1 Hash Value: 1998D943A31EA7A335CFA44996AB9D06
Description: Partially nude pre-pubescent male child lying on his back. An adult woman, wearing a robe and partially exposing her breasts is seen with the child's penis in her mouth as she performs oral sex on said child.

This image was put on the SD card on 08/18/2015, but no EXIF data as far as when actual image created.

39. I personally viewed the 235 images/videos of suspect LONNY DITIRRO located on said SD card and confirmed said images to be that of suspect LONNY DITIRRO, thus providing proof of ownership of said SD card as many of the images was "selfies" taken by LONNY DITIRRO himself. In addition, LONNY DITIRRO video recorded numerous videos of having sex with probable unidentified underage girls (ages 13-15) and pictures with various young teenage girls. The suspect also had two folders that were titled, "Me" and "Me Restricted." The "Me" folder contains dozens of "selfie" type images of himself. The "Me Restricted" folder contains nude images of the suspect LONNY DITIRRO. Both of these folders show additional ownership of said SD card. The suspect LONNY DITIRRO also had his "Resume" saved to the SD card that also provided proof of ownership.

1 40. On April 12, 2016, Investigative Specialist Lisa Rowe served an Administrative
2 Subpoena on Facebook, Inc. for all customer records pertaining to user account:
3 www.facebook.com/lonny.j.ditirro.

4 41. On April 13, 2016, Facebook, Inc. responded that user account:
5 www.facebook.com/lonny.j.ditirro, resolves to Lonny Joseph Ditirro, IP address of 76.3.155.54, cell
6 phone of [REDACTED], email addresses of guardian_angel_1@hotmail.com and
7 lonny.ditirro@gmail.com, and a profile picture that matches suspect LONNY DITIRRO images
8 found on SD card. The last login date was 03/17/2016.

9 42. Upon doing a routine record check on LONNY DITIRRO, he was further identified
10 as Lonny Joseph Ditirro. DOB [REDACTED], SSN [REDACTED], Suspended Nevada Driver's License
11 # [REDACTED].

12 43. Based on my training and experience, I know that micro SD cards can store images,
13 videos and other digital files. I know users can store files to a SD card by capturing images and
14 videos utilizing their cellular phone or a computer to download files from the internet, and
15 transferring these digital files to the SD card.

16 44. Because LONNY DITIRRO has previously used an electronic device such as a
17 Smartphone or computer to upload numerous images/videos of child pornography to said SanDisk
18 Micro Secure SD Card, there is probable cause to believe that evidence of a crime involving the
19 sexual exploitation of a child may be found on the computers or other digital devices located at the
20 residence of LONNY DITIRRO.

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1 b. Pursuant to Rule 41(e)(2)(B), Rule 41(e)(2)(A) governs the time within which
2 the electronically stored information must be seized after the issuance of the warrant and copied
3 after the execution of the warrant, not the "later review of the media or information" seized, or the
4 later off-site digital copying of that media.

5 c. Under Rule 41(f)(1)(B), the inventory return that is to be filed with the court
6 may be limited to a description of the "physical storage media" that was seized or copied, not an
7 itemization of the information or data stored on the "physical storage media."

8 d. Under Rule 41(f)(1)(B), I may retain a copy of that information for purposes
9 of the investigation. The government proposes that the original storage media plus a full image copy
10 of the seized media be retained by the government.

11 e. If the person from whom any electronic media was seized requests the return
12 of any information on the electronic media that is not set forth in Attachment B, that information
13 will be copied onto a hard drive and returned to the person from whom the information was seized.

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CONCLUSION

47. Based on the foregoing, I have probable cause to believe that LONNY DITIRRO committed the offenses involving child sexual exploitation, including violations pertaining to the travel with intent to engage in illicit sexual conduct in violation of Title 18 Sections 2251(a), 2252A(a)(2) and 2423(b), and that contraband, evidence, fruits and instrumentalities of those offenses, as more fully described in Attachment B, are presently located at [REDACTED] [REDACTED], Las Vegas, Nevada 89169 which is more fully described above and in Attachment A. I therefore request that the court issue a warrant authorizing a search of the premises described in Attachment A for the items listed in Attachment B, and the seizure and examination of any such items found.

151
 SCOTT S. MILLER
 ICAC Task Force Officer
 Federal Bureau of Investigation

Subscribed and sworn to before me this 16 day of June, 2016.

C.W. HOFFMAN, JR.

United States Magistrate Judge

I hereby attest and certify on 6/16/16 that the foregoing document is a true and correct copy of the original on file in my office and in my legal custody.

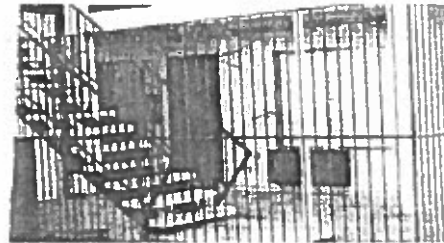
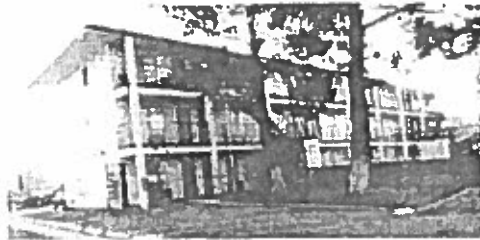
C.W. HOFFMAN, JR.
 U.S. MAGISTRATE JUDGE
 DISTRICT OF NEVADA

By 9031 Deputy Secretary

ATTACHMENT "A"

Property to Be Searched

The SUBJECT PREMISES is located inside the Siegel Suites Apartment Complex, at the address of [REDACTED] Apartment [REDACTED], Las Vegas, Nevada 89169, which is further described as a 3-story light tan stucco apartment building with brown accents. Apartment [REDACTED] is located on a 1st floor and there is a complex gated pool directly in front of [REDACTED]. Front door of Apartment [REDACTED] faces south and is red in color, with a gold [REDACTED] affixed to the top center of door. [REDACTED] sits on the northeast corner of the property and a brown [REDACTED] is affixed on the southwest corner of the building, just above the 1st floor. The only access point to get to [REDACTED] is located via a metal gate on the first floor, southwest corner of [REDACTED].



ATTACHMENT BLIST OF ITEMS TO BE SEARCHED FOR AND SEIZED

This affidavit is in support of application for a warrant to search the property known as a [REDACTED] in Las Vegas, Nevada, which is more specifically identified in the body of the application and in Attachment A, that can be used to store information and/or connect to the Internet, for records and materials that are fruits, evidence, or instrumentalities of violations of Title 18, United States Code, Sections 2251, 2252, and 2252A. These records and materials are more specifically identified as:

1. Any and all computers, computer system and related peripherals, cellular telephones, gaming consoles, personal digital assistants, tapes, cassettes, cartridges, streaming tape, commercial software and hardware, computer disks, disk drives, monitors, computer printers, modems, tape drives, disk application programs, data disks, system disk operating systems, magnetic media floppy disks, tape systems and hard drive, terminals (keyboards and display screens) and other computer related operation equipment, in addition to computer photographs, digital graphic file formats and/or photographs, slides or other visual depictions of such digital graphic file format equipment that may be, or are used to visually depict child pornography, information pertaining to the sexual interest in child pornography, sexual activity with children or the distribution, possession, or receipt of child pornography, or information pertaining to an interest in child pornography.
2. Any and all material depicting child pornography, any sexual conduct regardless of whether it is between adult(s) and children, or between children, child erotica; any images, visual recording, digital imagery, sketches, drawings, or other media depicting or portraying lewd or lascivious exhibition of children's genitalia; sexually suggestive poses involving children; or any type of sexually explicit conduct involving children, as defined in Title 18, United States Code, Section 2256(8). Any and all audio recordings involving children engaging in sexual acts, whether alone, with another child or children, or with an adult or adults.
3. Any and all computer software, including programs to run operating systems, applications (like word processing, graphics, or spreadsheet programs), utilities, compilers, interpreters, and communications programs.
4. Any computer-related documentation, which consists of written, recorded, printed or electronically stored material that explains or illustrates how to configure or use computer hardware, software or other related items.

1 5. Any and all records and materials, in any format and media (including, but not
2 limited to, envelopes, letters, papers, e-mail, chat logs and electronic messages), pertaining to the
3 possession, receipt or distribution of visual depictions of minors engaged in sexually explicit conduct,
as defined in Title 18, United States Code, Section 2256.

4 6. In any format and media, all originals, copies and negatives of visual depictions
5 of minors engaged in sexually explicit conduct, as defined in Title 18, United States Code, Section
6 2256.

7 7. Any and all cameras, camera equipment, photography equipment or any other
8 digital device capable of recording or storing sexually explicit images of minors in negative, digital or
other format.

9 8. Any and all records and materials, in any format and media (including, but not
10 limited to, envelopes, letters, papers, e-mail, chat logs and electronic messages) identifying persons
11 transmitting through interstate or foreign commerce, including via computer, any visual depiction of
minors engaged in sexually explicit conduct, as defined in Title 18, United States Code, Section 2256.

12 9. Any and all records and materials, in any format and media (including, but not
13 limited to, envelopes, letters, papers, e-mail, chat logs, electronic messages, other digital data files and
14 web cache information), bearing on the receipt, shipment or possession of visual depictions of minors
engaged in sexually explicit conduct, as defined in Title 18, United States Code, Section 2256.

15 10. Records of communication (as might be found, for example, in digital data files)
16 between individuals concerning the topic of child pornography, the existence of sites on the Internet that
17 contain child pornography or who cater to those with an interest in child pornography, as well as
evidence of membership, subscription or free membership, in online clubs, groups, services, or other
Internet sites that provide or make accessible child pornography to its members and constituents.

18 11. Evidence of any online storage, e-mail or other remote computer storage
19 subscription to include unique software of such subscription, user logs or archived data that show
20 connection to such service, and user login and passwords for such service.

21 12. Records evidencing occupancy or ownership of the premises described above,
including, but not limited to, utility and telephone bills, mail envelopes, or addressed correspondence.

22 13. Records, in any format or media, evidencing ownership or use of computer
23 equipment and paraphernalia found in the residence to be searched, including, but not limited to, sales
24 receipts, registration records, records of payment for Internet access, records of payment for access to
newsgroups or other online subscription services, handwritten notes and handwritten notes in computer

1 manuals.

2 14. Any and all buddy lists, correspondence, or text messages in whatever media
3 and format pertaining to Group E-Mails which relate to child exploitation or child pornography.

4 15. Images and videos of children in non-sexually explicit poses or scenes, located
5 in electronic, digital, or printed formats, which are necessary for comparison purposes of any visual
6 depiction of minors engaged in sexually explicit conduct, as defined in Title 18, United States Code,
7 Section 2256.

8 16. Any and all records, in any format, relating to or showing use of peer-to-peer
9 filing sharing programs and software.

10 17. For any computer, computer hard drive, or other physical object upon which
11 computer data can be recorded (hereinafter, "COMPUTER") that is called for by this warrant, or that
12 might contain things otherwise called for by this warrant:

13 a. Evidence of who used, owned, or controlled the COMPUTER at the
14 time the things described in this warrant were created, edited, or deleted, such as logs, registry entries,
15 configuration files, saved usernames and passwords, documents, browsing history, user profiles, email,
16 email contacts, "chat," instant messaging logs, photographs, and correspondence;

17 b. Evidence of software that would allow others to control the
18 COMPUTER, such as viruses, Trojan horses, and other forms of malicious software, as well as
19 evidence of the presence or absence of security software designed to detect malicious software;

20 c. Evidence of the lack of such malicious software;

21 d. Evidence of the attachment to the COMPUTER of other storage devices
22 or similar containers for electronic evidence;

23 e. Evidence of counter-forensic programs (and associated data) that are
24 designed to eliminate data from the COMPUTER;

f. Evidence of the times the COMPUTER was used;

g. Passwords, encryption keys, and other access devices that may be
necessary to access the COMPUTER.

18. Any safes, key-lock strong boxes, suitcases, boxes, containers and other instruments
closed and/or secured by combination and/or key locks of various kinds that may contain items
described in the above paragraphs of this Schedule, and their contents.

EXHIBIT I

Redacted by the FPD for
personal identifiers

EXHIBIT I

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

OFFICER'S REPORT

Event #: 150910-2991SUSPECT INTERVIEW

SUBJECT

DIVISION
REPORTING: ISDDIVISION OF
OCCURRENCE: ISDDATE & TIME
OCCURRED: 06/17/2016 0802 hoursLOCATION OF
OCCURRENCE: [REDACTED] Las Vegas, NV
89169NARRATIVE:

This case has been approved federally under FBI #: 305I-LV-7950929 for Possession of Child Pornography.

Suspect:

Lonny Joseph Dittiro Jr.

DOB: [REDACTED] SSN: [REDACTED]

WMA 6'04" / 250 lbs. brown hair and brown eyes

[REDACTED]

Officers:

Scott Miller PN 6507

SA Sue Flaherty FBI

Sean Taylor PN 8718

Brandonn Trotter HPD

Achim Brunette HPD

SA Mari Panovich FBI

SA Nick Bugni FBI

SA Chris McPeak FBI

SA Colin Congo FBI

SA Steven Baxter FBI

SA Aaron Ingalls FBI

SA Warrant Burke FBI

SSA Joe Perez FBI

SOS Kellie Badalucco FBI

Shawna Partridge FBI

Evidence:

Packaged and processed accordingly by SA Mari Panovich of the FBI.

Date and Time of Report: 06/15/2016 0900 hoursOfficer: Detective Scott MillerP#: 6507Approved By: Sgt. R. Spencer, P#7598

Officer:

P#:

SIGNATURE: [Signature] 6507

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 150910-2991

Synopsis:

Officers served a Federal search warrant reference Child Sexual Exploitation at [REDACTED] Las Vegas, Nevada [REDACTED]. An interview was conducted with Lonny Ditirro. Several items related to child pornography were seized from the residence. Lonny Ditirro was arrested on Federal arrest warrant.

Entry:

On June 17, 2016, at approximately 0700 hours, ICACTF, under the direction of SSA Joe Perez, having in possession a federal search warrant with the affiant being Scott Miller and signed by U.S. Magistrate Judge Carl W. Hoffman on June 16, 2016, for the property located at [REDACTED] Las Vegas, Nevada [REDACTED] executed said warrant at said location without incident by FBI SWAT officers. Officers were attired in clear law enforcement identifiers. FBI SWAT officers announced and challenged the residence and Lonny Ditirro exited the residence without incident. FBI SWAT officers then made entry and conducted a safety sweep of the residence while continuing to call for other potential occupants to exit the residence.

Custody / Interview Phase:

Suspect Lonny Ditirro was placed in to federal custody by myself for Federal Complaint, 2:16-mj-00431-NJK, signed by U.S. Magistrate Judge Nancy J. Koppe on 06/10/2016, for Possession of Child Pornography. Lonny Ditirro was then transported to the FBI Office for processing. Detective Scott Miller and Special Agent Sue Flaherty of the FBI conducted a recorded interview with Lonny Joseph Ditirro Jr. at the FBI Office, located at the address of 1787 W. Lake Mead Blvd., Las Vegas, NV 89106. Ditirro was advised of his Miranda rights and Ditirro acknowledged that he understood his rights.

Ditirro stated that that he lives with his roommates James and Jake at listed address for the past year. Ditirro stated his current cell phone, with phone number [REDACTED] is a black LG flip phone (Cricket Wireless) that has no internet access and no password. Ditirro stated that he has had this phone for approximately 2 weeks since he has been on house arrest for State charges submitted under this event. Ditirro stated that his previous phone with same phone number was a black Android S6 (Cricket Wireless), but that he sold it to unknown subject for \$100 after he was arrested and told he couldn't have the phone. Ditirro stated that conditions of his House Arrest was that he could have no internet access, or a device that could access internet, and no contact with minors.

Ditirro stated that he has email addresses of [REDACTED], and [REDACTED] (PW: [REDACTED]). He has a Facebook profile of Lonny Joseph Ditirro, Twitter handle of LDitirro, Instagram account, KIK account under Lonny Ditirro and a Meetme account.

Ditirro stated that he had no computers, notebooks, etc. Ditirro stated that he used to surf internet using his Android S6 smartphone. Ditirro stated he does view and download adult pornography and does masturbate while watching said pornography.

Ditirro stated that he gave his ex-girlfriend Rachel Saito an SD card because she didn't have one and needed it. He stated that his resume and several pictures of him were on said SD card. Ditirro stated that they did live together for almost a year and that they broke up in May or June of 2015.

Ditirro stated that he often feels lonely and that he needs a woman in his life. When asked about child pornography, Ditirro evoked his Miranda Rights and the interview was stopped accordingly. As Ditirro was getting processed at FBI Office, he spontaneously uttered that once went to New York to visit a girl he was in love with, but that she didn't want anything to do with him anymore and how sad that made him. No follow-up questions were asked and he made no other comments about this.

Ditirro was then booked accordingly in to U.S Marshal's for said federal arrest warrant.

Securing Residence Phase:

The residence was left in the care of said roommates James and Jim.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 150910-2991

Copies of the search warrant, sealing order and return were left at residence.

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EXHIBIT J

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EXHIBIT J

SER 0224



EXHIBIT K

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EXHIBIT K

SER 0226

UNCLASSIFIED

U.S. DEPARTMENT OF JUSTICE/FEDERAL BUREAU OF INVESTIGATION
SUBPOENA

FD-1035 (REV 2016-05-20)

Subpoena number: 311400 When responding please reference this subpoena number.

In the matter of case number(s): 305I-LV-7950929

TO: MeetMe, Inc
Legal Team
ADDRESS: 100 Union Square Drive
New Hope, PA 18938

TELEPHONE: 215-862-7829

FAX: 215-862-1109

GREETING:

By the service of this subpoena upon you by Kellie Beth Badalucco, who is authorized to serve it, you are hereby commanded and required to disclose to Kellie Beth Badalucco, a representative of the FBI, the following information Customer or subscriber name, address of service, and billing address; Length of service (including start date and end date); Records of session times and duration for Internet connectivity; Telephone or Instrument number (including IMEI, IMSI, UFMI, and ESN) and/or other customer/subscriber number(s) used to identify customer/subscriber, including any temporarily assigned network address (including Internet Protocol addresses) which may be relevant to an authorized law enforcement inquiry, involving the following: meetme.com/members/31048861 (Lonny DiTirtrro)

Please see the attached page explaining some terms that may be used in this demand. All time values are in the US/Eastern time zone, unless otherwise indicated.

THE INFORMATION SOUGHT THROUGH THIS SUBPOENA RELATES TO A FEDERAL CRIMINAL INVESTIGATION BEING CONDUCTED BY THE FBI.

YOUR COMPANY IS REQUIRED TO FURNISH THIS INFORMATION.

YOU ARE REQUESTED NOT TO DISCLOSE THE EXISTENCE OF THIS SUBPOENA INDEFINITELY AS ANY SUCH DISCLOSURE COULD INTERFERE WITH AN ONGOING INVESTIGATION AND ENFORCEMENT OF THE LAW.

Compliance must be made by personal appearance or production of records no later than the 20th day of July, 2016 at 09:00 a'clock AM, at John Lawrence Bailey Bldg, 1787 West Lake Mead Boulevard, Las Vegas, NV 89106-2135.

In lieu of a personal appearance, the information can be provided, via email, marked to the attention of Kellie Badalucco, at the following email: kellie.badalucco@ic.fbi.gov.

If you refuse to obey this subpoena, the United States Attorney General may invoke the aid of a United States District Court to compel compliance. Your failure to obey the resulting court order may be punished as contempt.

Issued under authority of Public Law No. 106-544, §5(a)
(18 U.S.C. §3486)

ORIGINAL

Signature: S/ Nicholas Bugni

Name: Nicholas Bugni

Title: Acting Supervisory Special Agent

Issued this 20th day of June, 2016

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SER 0227 00085

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